



# PUBLIC COMMENT SESSION SIGN IN SHEET

OCONEE COUNTY COUNCIL MEETING

Thursday, May 4, 2010

6:00 PM

Oconee County Administrative Offices  
415 South Pine Street, Wallhalla, SC

*Limited to forty [40] minutes, four [4] minutes per person.*

**Comments MUST be related to a specific agenda item  
slated for action at the meeting.**

*If time permits the Chairman may allow citizens who have not signed up to speak to address non agenda items.*

## PLEASE PRINT

	FULL NAME	AGENDA ITEM FOR DISCUSSION
1	X Rebecca Gaetz	11/4 - \$3.5 million bond 2010
2	X Geoff Pally	11/4 - \$3.5 million bond 2010
3	X Brit ADAM	200 - 06
4	X RANDY SIMPSON	44 - \$3.5 Mil Bond
5	X Joseph JONES	Pointe West/West Pointe
6	X LARRY LINSIN	11 (4) POINT WEST/WEST POINT
7	X Tom Sittan	" "
8	<del>Tom Markovitch</del>	<del>12 (2) Worker's Comp.</del>
9		
10		
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14	X B. J. H.	
15		



OCONEE COUNTY COUNCIL  
ABSTENTION FORM

Council Member Name: Wayne McCall  
(Please Print)

Council Member Signature: [Handwritten Signature]

Meeting Date: 5-4-2010

Item for Discussion/Vote: Ordinance 2010-05  
2010-06  
2010-07

Reason for Absention:  I was not present for original meeting/discussion  
 I have a personal/familial interest in the issue.  
Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Handwritten Signature]  
Elizabeth G. Hulse  
Clerk to Council

*[This form to be filed as part of the permanent record of the meeting.]*

# CRS REPORT FOR CONGRESS

## Superfund Fact Book

### Environment and natural Resources Policy Division

- **Strict liability** means the government needs to prove only involvement at a waste site, not negligence.
- **Joint and several liability** indicates that any involved party may have responsibility for the entire site, regardless of its degree of involvement.
- **Retroactive liability** means that parties can be held liable for past actions that may have been legal at the time.



## UNLEASHING CAPITALISM: Oconee County

### Economic Development Spending Hurts South Carolina's Economy

In South Carolina, economic incentive spending has been the emerging trend of the last 20 years. In 1994, the state spent \$32 million on economic incentives. In 2008, that figure climbed to more than \$500 million.

Over the past two decades, the legislature has awarded special tax breaks, job credits, exemptions, bonds, and other preferential treatment to particular businesses and industries. Economists have analyzed this trend and concluded that it has no net positive impact on the state economy.

In fact, the two stated goals of economic development spending are to create jobs and increase wealth. But today, South Carolina has the 4<sup>th</sup> highest unemployment rate and 5<sup>th</sup> lowest per capita income. A better approach would be to foster a stable economic environment with a low tax rate, fewer burdensome regulations, and reduced government spending.

Unfortunately, local governments have followed the same trend. Today, the Oconee County Council is considering giving \$3.5 million in bonds to a private developer and contractor. This \$3.5 million will provide special revenue bonds to the Pointe West development. Additionally, Pointe West will enter into a Fee in Lieu of Tax (FILOT) agreement with the county – replacing property taxes with a specially negotiated fee.

Some general Oconee budget figures:

- For FY 2007-2008, total government spending was \$42.9 million.
- Economic development spending was \$725,504.
- Between 2004 and 2008, total government spending increased by 21 percent. Yet economic development spending increased by 42 percent.
- The unemployment rate in Oconee County for Feb. 2010 was 14.1 percent. The annual rate has been climbing over the past 3 years:
  - o 2007: 6.8 percent
  - o 2008: 7.4 percent
  - o 2009: 13.7 percent

In *Unleashing Capitalism*, economists from both South Carolina and across the country examined the state of our economy. Notably, they highlighted the unpredictable and unfair environment that is created from taxpayer-funded incentives.

#### Costs of FILOT Programs

A \$3.5 million bond from the county comes directly out of taxpayers' pockets. Although funding will theoretically be paid back with FILOT funds, there are unintended consequences that harm taxpayers.

According to the Oconee budget document, the largest source of revenue is the property tax – about 69 percent of the total budget. Each new FILOT agreement places a heavier tax burden on other businesses.





Additionally, the Pointe West deal will hurt those other businesses even more. Instead of FILOT money streaming into the General Fund, that funding will have to be used to repay the special revenue bond. The new development will require increased services from the county – more infrastructure, police, etc. This creates an added cost to the county – one that should theoretically be paid for with property taxes or FILOT money. But if those funds are being used to repay the bond, then where will it come from? Either increased taxes on existing businesses, or the county will need to tighten its budget in order to use current levels of funding to serve a greater number of constituents.

As explained in *Unleashing Capitalism*, the fee will be tainted by political preferences and shifts the burden of taxes onto businesses that don't receive the tax breaks. To simplify:

There are 2 businesses that each pay \$50 for services. A third business opens and only pays \$15 for services. But there is now \$150 of services required. The existing businesses face a higher tax burden.

The state created FILOT agreements in 1987 as a mechanism to offset high assessments on industrial property. The original required investment was \$85 million to qualify – which was then lowered to \$45 million in the 1990s, \$5 million in 1995, and then \$1 million in 1999 for select counties.

#### Analyzing the Figures

In Michigan, economic development spending has been a popular tool of government. Every year there are deals announced with predicted job increases and improvement for the state. But according to the Mackinac Center for Public Policy, only 29 percent of jobs announced in incentive packages actually arrive.

Mackinac conducted evaluations of 219 economic incentive deals that the state entered into before 2004. The analysis – completed in 2009 – checked to see if the 61,043 jobs promised were actually created. However, only 17,791 jobs were created.

We've heard for years that economic incentive packages will pay off. We've asked South Carolina for figures on their job creation totals – but the state has not produced evidence. We've requested their figures, but we've been told that it does not exist.

This once again portrays how unpredictable the market is – there is no such thing as a guarantee. When businesses pursue an opportunity, there is an inherent risk in the project. More often than not, these ventures fail – as market demand dictates consumers' preferences. The risk of such projects, falls upon the shoulders of the investors. But when taxpayers are forced to subsidize businesses, they suddenly share in that risk.

If the Pointe West development is such a guarantee to be successful, then it should not need taxpayer dollars. If the tax burden in Oconee is believed to be too high, then it should be lowered for everyone – and not just one entity.

To learn more about how you can help unleash freedom and prosperity in your community, visit us on the web at <http://unleashingcapitalismsc.org>.

*Nothing in the foregoing should be construed as an attempt to aid or hinder passage of any legislation. Copyright © 2010.*



## FACT SHEET

South Carolina Policy Council

1323 Pendleton St., Columbia, SC 29201 • 803-779-5022 • scpolicycouncil.com

### County Tax Burdens on Local Business: Where Does Your County Rank?

Jumpstarting South Carolina's economy will require reforms at both the state and local levels. As many independent businesses know, local tax and licensure policies can impose serious burdens on new business creation and expansion. That being said, reforming local tax policies may be easier to implement than statewide reforms.

*Unleashing Capitalism* briefly discusses South Carolina's local business climates, using a measure referred to as tax quotients. A tax quotient is calculated as the amount of county revenue generated by county and local taxation, relative to the same measure for all counties in the United States.

A tax quotient greater than 1.0 implies the county has an above average reliance on tax collections – meaning the county has a negative tax climate for business. Alternatively, a county with a quotient less than 1.0 has a more competitive tax climate.

Let's look at some interesting points:

- Marion County boasts the lowest tax quotient (0.049) in the state.
- Bamberg County has the highest tax quotient (2.903) in South Carolina.
- The average tax quotient for all counties in South Carolina is 1.12. This is 12 percent higher than the national average of 1.0.
- More than half (27 out of 46) of South Carolina's counties have a quotient greater than 1.0 – that is, higher than the national average.
- The county with the lowest tax quotient in America is Oliver, North Dakota (0.0015).
- The county with the highest tax quotient is Haakon, South Dakota (5.7148).

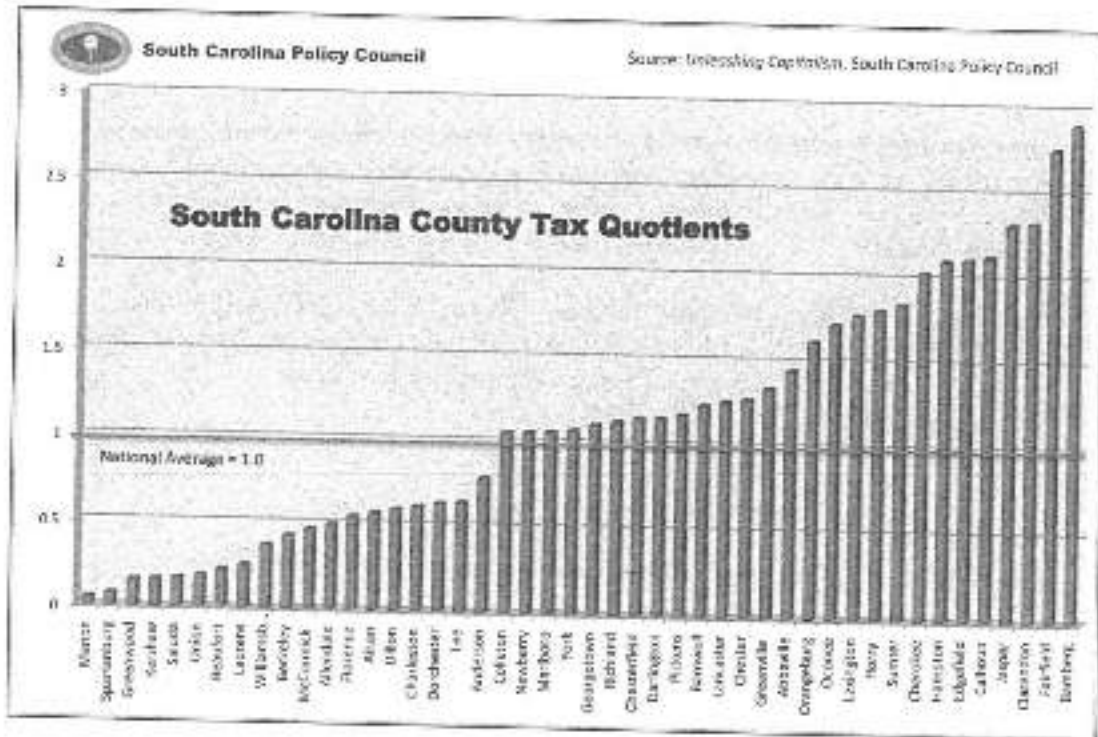
According to *Unleashing Capitalism*, a 1 percent increase in county tax quotient is associated with a -0.07 percent decline in the reported number of business establishments and a -0.02 percent decline in employment.

Still, the impact of high local taxes must be weighed against other factors, such as education levels, natural resources and tax rates in neighboring counties. All things being equal, if a group of counties have a tax quotient of 1.5, a comparably high rate may not prove as much of a disincentive to firms wishing to relocate to that region. But if one county has a very high tax quotient – and is surrounded by counties with low tax quotients – this can compound job losses, shrinking tax revenue even further.

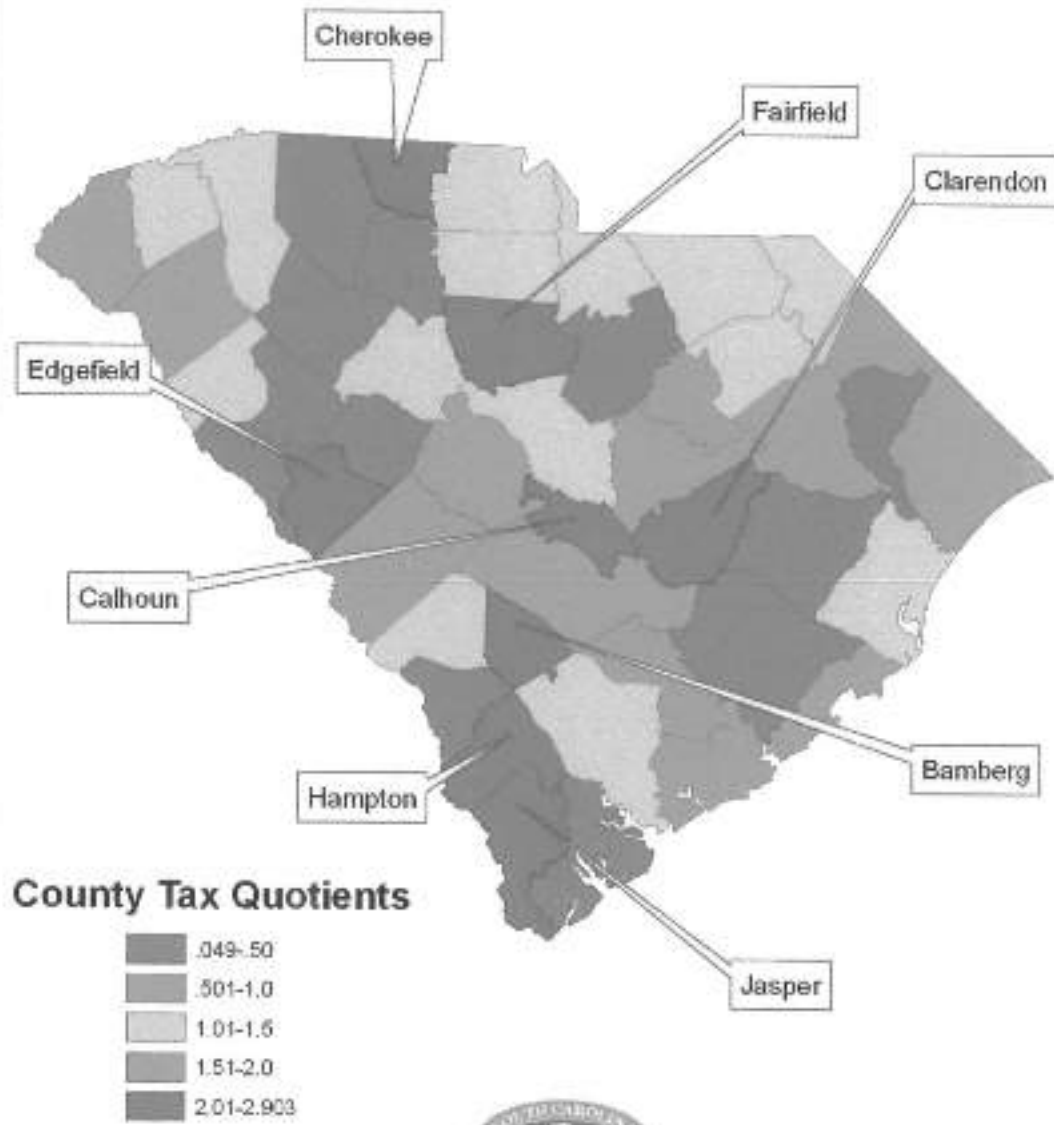
**FACT SHEET:**

The tax quotient data used here was provided by economist and Indiana University Professor Dr. Justin Ross and relies on census data from 2009. While business climates vary greatly among municipalities within the same county, this dataset aggregates municipal data up to the county level. For the purpose of examining how tax differentials vary geographically within South Carolina, as well as their impact on employment and number of business establishments, the county level is an appropriate unit.

See how your county stacks up:



# S.C. County Tax Burdens



Data Courtesy of Justin Ross, Ph.D



South Carolina Policy Council



**PUBLIC HEARING  
SIGN IN SHEET  
OCONEE COUNTY COUNCIL MEETING  
DATE: May 4, 2010 7:00 p.m.**

Ordinance 2010-04 "AN ORDINANCE TO AMEND THE AGREEMENT AUTHORIZED BY ORDINANCES 2006-27 AND 2008-17 RELATING TO THE INDUSTRIAL/BUSINESS PARK OF OCONEE AND PICKENS COUNTIES SO AS TO ENLARGE THE PARK" along with the Second Amendment of Agreement for Development for Joint Industrial Park.

Public comment will be limited to four minutes per person.

Written comments may be submitted at any time prior to the hearing for inclusion in the official record of the meeting.

**Please PRINT your name**

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NONE

STATE OF SOUTH CAROLINA  
OCONEE COUNTY  
**RESOLUTION R2010-05**

A RESOLUTION AUTHORIZING THE TERMINATION OF AN EXISTING AGREEMENT, DATED JULY 18, 2006, AND AUTHORIZING A USE AND MAINTENANCE AGREEMENT WITH THE SOUTH CAROLINA FOOTHILLS HERITAGE FAIR, ALL WITH REGARDS TO THAT CERTAIN OCONEE COUNTY PROPERTY LOCATED, GENERALLY, AT 1220 HIGHWAY 59, FAIR PLAY, SOUTH CAROLINA; AND OTHER MATTERS RELATED THERETO.

**WHEREAS**, Oconee County, South Carolina ("Oconee County"), is a body politic and corporate and a political subdivision of the State of South Carolina and owns certain real property within Oconee County, located at 1220 Highway 59, Fair Play, South Carolina 29643 (the "Property"); and,

**WHEREAS**, on July 18, 2006, Oconee County entered into an agreement with John R. Harris for certain use and maintenance of the Property (the "Harris Agreement"), a copy of which is attached hereto as **Exhibit A**, and incorporated herein by reference; and,

**WHEREAS**, Oconee County desires to terminate the Harris Agreement with Mr. Harris, in accordance with the terms of that agreement, so that Oconee County may agree to allow the South Carolina Foothills Heritage Fair (the "Heritage Fair"), an eleemosynary organization, duly organized under the laws of the State of South Carolina, to use and maintain the Property; and,

**WHEREAS**, Oconee County and the Heritage Fair desire to enter into a Use and Maintenance Agreement ("Use and Maintenance Agreement") attached as **Exhibit B**, and incorporated herein by reference.

**NOW, THEREFORE**, be it resolved by Oconee County Council in meeting duly assembled that:

1. Oconee County, acting by and through the Oconee County Council, hereby authorizes the termination of the Harris Agreement, in accordance with the terms of that agreement, and hereby directs the Oconee County Administrator to provide any necessary notification as set forth in the Harris Agreement and to take all other steps and actions as are necessary or appropriate to terminate the Harris Agreement, on behalf of Oconee County.
2. Oconee County, acting by and through the Oconee County Council, hereby authorizes and approves the Use and Maintenance Agreement, to go into effect on or after the termination of the Harris Agreement.
3. The Oconee County Administrator is hereby authorized to negotiate minor changes to the terms and conditions of the Use and Maintenance Agreement, so long as such minor changes are not materially adverse to Oconee County and so long as the final terms and conditions are substantially similar to the terms and conditions set forth in the Use and Maintenance Agreement.
4. The Oconee County Administrator is hereby authorized and directed to execute and deliver the Use and Maintenance Agreement on behalf of Oconee County, and to take all other steps and actions as are necessary or appropriate to effectuate the Use and Maintenance Agreement.
5. All orders and resolutions in conflict herewith are, to the extent of such conflict only, repealed and rescinded.



## USE AND MAINTENANCE AGREEMENT

**THIS USE AND MAINTENANCE AGREEMENT** ("Agreement") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2010 by and between Oconee County (the "County") and the South Carolina Foothills Heritage Fair ("User") (hereinafter collectively referred to as the "Parties").

In consideration of the mutually dependent responsibility to maintain and the grant of the right to use the premises described herein, and the agreements hereinafter contained, County and User hereby covenant and agree as follows:

1. **Use of Property as Fairgrounds:** County hereby grants to User certain rights, privileges, responsibilities and liabilities as hereinafter defined to use and maintain the property located at 1220 Hwy. 59, Fair Play, SC 29643 (the "Property"), more particularly described on the attached Exhibit "A" and incorporated herein by reference. The Property shall be used only for fairs, exhibitions and related activities, as well as agricultural related activities, subject, however, to any authority and responsibility of User to maintain and manage specific aspects of the Property as provided herein. Any access to the Property is subject to County's use of the Property. County may continue to market the Property, show the Property, and sell the Property, and County's own use of the Property for direct County needs shall pre-empt User's use of the Property. The Property shall be used only for the rights and privileges granted herein, and no use of the Property shall be inconsistent with the primary use of the Property for fairs, exhibitions and related activities, or inconsistent with County's ownership of the Property. Any and all rights, privileges, responsibilities and liabilities granted herein are subject to and subordinate to County's ownership of the Property and no rights or privileges granted herein shall be construed to grant any superior rights or rights greater than those held by County.
2. **Term and Termination:**
  - A. *Term of Agreement.* The initial term (the "Term") of this Agreement shall commence on \_\_\_\_\_, 2010 (the "Commencement Date") and shall expire on \_\_\_\_\_, 2011, a date one (1) year after the Commencement Date. Thereafter, this Agreement may be renewed, in writing, for the same or a different term length, only with the mutual written consent of the Parties.
  - B. *Termination for Convenience.* Either party may terminate this Agreement for any reason or no reason upon a thirty (30) day advance written notice to the other party.
  - C. *Partial Severability.* County may, in County's discretion and with no further obligation to User, amend this Agreement and the rights and responsibilities contained herein, upon thirty (30) days written notice, with regard to any portion of the Property for which County has a direct County need. In such case, County will state the specific portion of the Property to which this Agreement shall no longer apply.
3. **Conditions:** Attached hereto as Exhibit "B" and incorporated herein is a general concept plan (the "Concept Plan") for the improvement of the Property. County and User acknowledge that use of the Property for fairs, exhibitions and related uses contemplated by this Agreement will not exist without the provision of maintenance of the Property by User, parking support, and material restoration and improvements of the Property by User. Consequently, the following are conditions of this Agreement:
  - A. *Restoration of Pole Barn and Silo.* Subject to the contingencies and required approvals herein, User shall restore, preserve and maintain the pole barn and metal grain silo currently located on the Property, and User may paint any or all of said structures, in User's discretion, so long as such painting is consistent with the Concept Plan and agricultural theme of User's activities, and not inconsistent with local or state laws or County's use or marketing of the Property.
  - B. *Restoration or Demolition of Barn.* Subject to the contingencies and required approvals herein, User shall restore, preserve and maintain the barn currently located on the Property, and User may paint the barn, in User's discretion, so long as such painting is consistent with the Concept Plan

maintain, and access at all times the improvements shown on the Concept Plan provided that (i) such improvements are constructed without cost to County, (ii) such improvements are not inconsistent with County's marketing of the Property, and (iii) such improvements are not inconsistent with local or state laws. Subject to the contingencies and required approvals herein, User shall, at minimum, grade and landscape the Property in accordance with the Concept Plan.

*E. Right to Construct and Maintain Temporary Structures.* Subject to County's prior written approval, not to be unreasonably withheld or delayed, User shall have the right to construct and maintain temporary structures, provide such equipment and make such improvements upon the Property as may be necessary to implement the Concept Plan. No improvements shall be made to the Property except in accordance with such Concept Plan.

*F. Right to Operate.* User may operate buildings, structures, and other improvements described herein, only for the uses and obligations contemplated herein.

*G. Right to Install Signage.* User may install and display temporary signage so long as the signage is consistent with the agricultural theme of their activities, and not inconsistent with local or state laws or County's use or marketing of the property.

*H. Right to Plant and Harvest.* User may plant, cultivate, and harvest experimental or demonstration crops on the Property which meet all federal and state laws, guidelines and requirements and in accordance with the Concept Plan. User may harvest, use, and sell any hay cut on the Property during the Term.

*I. Right to Clear.* User may clear the Property of all underbrush and undesirable shrubbery and growth, but not commercially harvestable timber. Unless otherwise authorized, in writing, by County, User shall not cut or remove or damage any trees of more than four (4) inches in diameter, measured three (3) feet above the ground.

*J. Right to Install Security Measures.* User may exercise reasonable precautions to protect the Property, for County and for User's activities, including, without limitation, non-permanent security devices, including gates, in accordance with the Concept Plan, so long as such precautions are not inconsistent with local or state laws or County's use or marketing of the Property and County is not denied reasonable access for County's own use of the Property.

*K. Right to Install Temporary Utilities.* User may install, operate, maintain, repair and replace necessary temporary utilities across, over or under the Property in accordance with the Concept Plan, so long as the temporary utilities are not inconsistent with local or state laws or County's use or marketing of the Property and are removed at the discretion and written instruction of County.

*L. Right to Install Permanent Utilities.* With County's prior written approval, not to be unreasonably delayed, User may install, operate, maintain, repair and replace necessary permanent utilities across, over or under the Property in accordance with the Concept Plan and not inconsistent with local or state laws or County's use or marketing of the Property.

*M. Right to Perform Grading Work.* User may perform rough grading work on the emergency north entranceway, in accordance with the Concept Plan and only to the extent necessary to allow emergency vehicles to get to the area to be used for the fairgrounds other than on the primary access road.

**6. County's Rights.** Without limiting, and in addition to, County's ownership rights to the Property, County shall have the following specific rights with regard to the Property during the Term:

*A. Right to Install Utilities.* County, in County's sole discretion, may install, operate, maintain, repair and replace utilities across, over and under the Property.

*B. Construction of Entrances.* County, in County's sole discretion, may construct the south

improvements or repairs and User will have such obligations relating thereto and such rights therein as are set forth in this Agreement.

B. User agrees that User will pay all liens of contractors, subcontractors, mechanics, laborers, materialmen and other like parties and will indemnify County against all legal costs and charges, bond premiums for release of liens, including legal counsel fees and costs reasonably incurred in and about the defense of any suit in discharging the Property or any part thereof from any liens, judgments or encumbrances caused by User. Provided, however, that User shall have no obligation to pay any party who has filed a lien against the Property if User has a dispute over the amount owed or the work performed by such party so long as User has posted a bond or other surety instrument in an amount equal to one and one third times the amount of such lien.

10. **Not For Profit.** During the Term, User shall maintain its not-for-profit, eleemosynary status in good standing with the South Carolina Secretary of State and the United States Internal Revenue Service.
11. **Accounts, Records and Receipts.** Unless otherwise prohibited by law, all monies received by User from operations conducted on the Property, including but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by User for the administration, maintenance, operation and development of the Property and the activities conducted by the User on the Property. User shall establish and maintain accurate records and accounts and provide an annual statement of such receipts and expenditures to County. County shall have the right to perform audits or to require User to audit the records and accounts of User, third party concessionaires and any other third parties collecting access or User fees on the Property in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Accountants or by the state, and furnish County with the results of such audit.
12. **Insurance.** User shall carry and pay the premium on a general liability insurance policy with a single combined limit of not less than Five Million Dollars (\$5,000,000.00) to protect against bodily injury or property damage and to file a copy of said policy with County annually; said policy shall give protection to the public, User's agents, User's employees, and User's licensees in connection with all activities or events engaged in by User in its use, maintenance and operation of the Property. The insurance required by this Agreement shall, at a minimum, be issued by insurance companies authorized to do business in the State of South Carolina, with a financial rating of at least an A+3A status as rated in the most recent edition of Bests Insurance Reports and shall name County as an additional insured at the cost of User. User agrees to furnish County with a copy of certificates or binders evidencing the existence of the insurance required herein within forty five (45) days of the execution of this Agreement. County must receive at least ten days' prior written notice of any cancellation of User's insurance coverage.

County shall not be liable to User or User's employees, agents, representatives, officers, directors, members, partners or licensees for any damage whatsoever to persons or property of User or User's employees, agents, representatives, officers, directors, members, partners or licensees for occurrences on the Property.

13. **Sublease/Assignment/Ownership Interests.** Without the prior written approval of County, User will not transfer or assign any interest or privilege of User hereunder or sublet or grant any interest, privilege, or license whatsoever in connection with this Agreement.
14. **Restoration.** On or before the final expiration of this Agreement, as extended, or its termination by User, User shall vacate the Property, remove the property of User, and restore the Property to the Property's original condition or better, except with express written consent of County otherwise. If, however, this Agreement is revoked, User shall vacate the Property, remove the property of User therefrom, and restore the Property to the Property's original condition or better, within such time as County may designate. In either event, if User shall fail or neglect to remove said property and restore the Property, then, at the option of County, said property shall either become the property of County



21. **Survival.** All indemnification and release provisions under this Agreement shall survive the expiration or sooner termination of this Agreement.
22. **Default and Remedies.** In the event that User breaches any term or provision of this Agreement, and fails to remedy the same after thirty (30) days written notice, County may terminate this Agreement by giving written notice to User, provided, however, that County may not terminate this Agreement if the nature of User's breach is such that it cannot reasonably be cured within thirty (30) days and User is diligently pursuing a cure of such breach. In the event User files a petition in bankruptcy or receivership or makes a transfer or assignment for the benefit or creditors, then County may immediately terminate this Agreement, such termination to be effective immediately upon receipt of notice. In the event of the termination of this Agreement, privileges granted herein and obligations imposed herein shall terminate immediately and any and all rights of User to any fees or charges to third parties, including but not limited to concessionaires and vendors, shall immediately accrue to County. Upon termination of this Agreement, County will have the right to remove or store any property or other trade fixture not a part of the Property and belonging to User without any liability therefor. User further agrees to pay all of County's expenses, including attorney's fees and costs, in enforcing any of the obligations of this Agreement, or in any proceedings or litigation in which County shall become involved without County's fault, by reason of this Agreement.

23. **Conflict Resolution.**

A. Any conflict, dispute or grievance (collectively, "Conflict") by User must first be submitted in writing to the Oconee County Administrator for negotiation and resolution.

B. In the event that the Conflict is not resolved by the Oconee County Administrator or his designee within fifteen (15) business days, the parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Commercial Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Walhalla, South Carolina, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

24. **Notices.** Any notice given by one party to the other in connection with this Agreement shall be in writing and hand-delivered or sent by certified or registered mail, return receipt requested:

If to County, addressed to:

If to User, addressed to:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
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 \_\_\_\_\_

Notices shall be deemed to have been received on the date of hand-delivery to User's officer, director, partner or member or upon receipt as shown on the return receipt if sent by certified mail or one day after being sent by overnight courier. Changes in either party's notice address shall be effective if given in the manner set forth above.

25. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of South Carolina.
26. **Non-appropriation.** This Agreement is subject to the appropriation of funds by Oconee County Council. In the event of a non-appropriation of funds by Oconee County Council that may affect County's performance of any act required by this Agreement, this Agreement will be deemed terminated thirty (30) days following such non-appropriation and written notice thereof.

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

EXHIBIT "B"

Concept Plan



**AGENDA ITEM SUMMARY  
OCONEE COUNTY, SC**

**COUNCIL MEETING DATE:** May 4, 2010  
**COUNCIL MEETING TIME:** 7:00 PM

**ITEM TITLE OR DESCRIPTION:**

**Third and Final Reading:** ORDINANCE 2010-02 – “AN ORDINANCE AMENDING CHAPTER 2, ARTICLE V OF THE OCONEE COUNTY CODE OF ORDINANCES PERTAINING TO THE PROCUREMENT POLICIES AND PROCEDURES OF OCONEE COUNTY; AND OTHER MATTERS RELATED THERETO”.

**BACKGROUND OR HISTORY:**

The original Procurement Ordinance 85-2 was updated by Ordinance 2001-15 on December 4, 2001. Since that time there has only been one amendment ordinance 2002-12 which included only two changes. At this time, an updated Procurement Ordinance is submitted for approval. This new Ordinance follows a new format and addresses many issues that are standard in other South Carolina County Ordinances.

**SPECIAL CONSIDERATIONS OR CONCERNS:**

Ordinance will need three readings and a public hearing to be approved.

**COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:**

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes / No -- Not Applicable.

**STAFF RECOMMENDATION:**

Staff recommends approval of Ordinance 2010-02 as amended without a local vendor preference which treats all vendors fairly and equally. If County Council desires to include a local vendor preference, then staff suggests the following wording be added to the amended Ordinance 2010-02:

The lowest local responsible and responsive bidder who is within two percent (2%) of the lowest non-local responsible and responsive bidder, may match the bid submitted by the non-local responsible and responsive bidder and thereby be awarded the contract. The local preference as set forth in this section shall only be applied to responses to solicitations of written quotes and invitations to bid in excess of ten thousand dollars (\$10,000.00). The local preference as set forth in this section shall only be given to local responsible and responsive bidders who have a physical business address located and operating within Oconee County and who have met all other requirements of the solicitations of written quotes or the invitation to bid, including, without limitation, payment of all duly assessed state and local taxes. If state or federal guidelines prohibit or otherwise limit local preference, then the County shall not use local preference in awarding the contract. If there are multiple responsible and responsive bidders who meet the local preference guidelines as set forth in this section, the County shall use standard procurement practice and procedure as set forth in this Article to determine the priority of selection. The local preference as set forth in this section does not waive or otherwise abrogate the County's unqualified right to reject any and all bids or proposals or accept such bids or proposals, as appears in the County's own best interest.

**FINANCIAL IMPACT:**

None.

*Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.*

*A calendar with due dates marked may be obtained from the Clerk to Council.*

**ATTACHMENTS**

1. Ordinance 2010-02 and Amended Exhibit A

**Reviewed By/ Initials:**

\_\_\_\_\_ County Attorney      \_\_\_\_\_ Finance      \_\_\_\_\_ Grants      \_\_\_\_\_ Procurement

**Submitted or Prepared By:**

  
Department Head/Elected Official

**Approved for Submittal to Council:**

  
Gene Klugh, Interim County Administrator

*Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.*

*A calendar with due dates marked may be obtained from the Clerk to Council.*

STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE  
**ORDINANCE 2010-02**

**AN ORDINANCE AMENDING CHAPTER 2, ARTICLE V OF THE OCONEE  
COUNTY CODE OF ORDINANCES PERTAINING TO THE PROCUREMENT  
POLICIES AND PROCEDURES OF OCONEE COUNTY; AND OTHER  
MATTERS RELATED THERETO**

**WHEREAS**, Oconee County, South Carolina (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through the Oconee County Council (the "County Council"), has previously adopted certain ordinances and regulations regarding procurement, all of which are codified in Chapter 2, Article V of the Code of Ordinances, Oconee County, South Carolina (the "Code of Ordinances"); and,

**WHEREAS**, the South Carolina General Assembly has delegated the responsibility to political subdivisions of South Carolina, including the County, to adopt ordinances and promulgate procedures embodying sound principles of appropriately competitive procurement; and,

**WHEREAS**, the County Council recognizes that the primary concern of county government is the effective provision of services to the citizens of the County in a competitive, efficient and economical way; and,

**WHEREAS**, the County Council intends for all purchases of goods and services needed to provide these governmental services in the County be conducted with primary concern for the efficient and economical use of revenues provided by the citizens of the County; and,

**WHEREAS**, the County Council desires to update, amend and revise the centralized procurement practices and processes of the County, to provide a clear and comprehensive ordinance governing procurement by this County; to promote increased public confidence in the procurement regulations, procedures, and practices used by this County; to maximize the purchasing value of public funds; to foster real and effective broad-based competition for public procurement within the free enterprise system; to provide safeguards for maintaining a procurement system of quality and integrity; and to permit the continued development of procurement regulations, procedures, and practices that support user needs.

**WHEREAS**, the County Council therefore intends to repeal and replace all sections in Chapter 2, Article V of the Code of Ordinances:

**NOW, THEREFORE**, be it ordained by County Council, in meeting duly assembled that:

1. Chapter 2, Article V of the Code of Ordinances, Oconee County, South Carolina, entitled *Finance*, is hereby repealed in its entirety, is renamed *Procurement*, and is replaced as set forth in **Exhibit A**, which is attached hereto and hereby incorporated by reference as fully as if set forth verbatim herein.
2. All sections and divisions of Chapter 2, Article V of the Code of Ordinances that are not specifically replaced by and through Exhibit A are hereby repealed, revoked, and rescinded.
3. The remaining terms and provisions of the Code of Ordinances not revised or affected hereby remain in full force and effect.
4. Should any word, phrase clause or provision of this Ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, such determination shall not effect this Ordinance as a whole, or any part hereof, except that specific provision declared by such court to be invalid or unconstitutional. If any part of this Ordinance is declared invalid, the remainder of the Ordinance shall not be affected and shall remain in force.
5. This Ordinance shall take effect and be in full force and effect from and after third reading and enactment by County Council.

ORDINANCE 2010-02  
Exhibit A

**ARTICLE V. PROCUREMENT.**

**SECTION 2-421. Application.**

(a) **General Application.** This Article applies to contracts for the procurement of property, supplies, services, and construction entered into by the County after the effective date of Oconee County Ordinance 2010-02, unless the parties agree to its application to contracts entered into prior to the effective date.

(b) **Application to County Procurement.** This Article shall apply to every expenditure of funds by the County for the purpose of procuring property, supplies, services, and construction services for the County irrespective of the source of funds. It shall also apply to the disposal of County equipment and supplies.

(c) **Application to State or Federal Fund Procurements.** Where a procurement involves funds provided by the State of South Carolina or the United States of America, that procurement shall be in compliance with such State or Federal laws and authorized regulations as are mandatorily applicable. However, in every instance where the provisions of this Article are more restrictive than State or Federal laws or authorized regulations, the provisions of this Article shall be followed.

**SECTION 2-422. Definitions.**

**Architect-Engineer and Land Surveying Services.** Those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture and interior design pertaining to construction, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including but not limited to studies, investigations, surveys, evaluations, consultations, planning, programming conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals and other related services.

**Bidder.** A business who has submitted a bid in response to an invitation for bids.

**Business.** Any corporation, partnership, sole proprietorship, firm, enterprise, company, franchise, association, organization, self-employed individual, or any other private legal entity.

**Change Order.** An agreed-upon written order to a Contractor executed by the Procurement Director and the Contractor after or in conjunction with execution of the base contract, directing a change in the work which may include a change in the contract price, the time for the Contractor's performance, or any combination thereof.

**Construction.** The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings or real property.

**Construction Management Services, Design-Build Services, or Turnkey Management Services.** Approaches to construction contract management that allow for the selection of a single business to perform and manage the complete design and construction of a project.

**Contract.** All types of County agreements, regardless of how they may be styled, for the procurement or disposal of property, supplies, services, or construction.

**Contract Modification.** Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

**Contractor.** Any business having a contract with the County.

**Cooperative Procurement.** Procurement conducted by, or on behalf of, more than one Public Procurement Unit.

**Cost Reimbursement Contract** (also known as a Cost Plus-a-Percentage Contract) A contract that reimburses the contractor for all incurred costs which are allowable and allocable under the terms of the contract and may include a profit or fee.



ORDINANCE 2010-02  
Exhibit A

**Responsible Bidder or Offeror.** A business who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

**Responsive Bidder or Offeror.** A business who has submitted a bid or offer which conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.

**Service(s).** The furnishing of labor, time, or effort by a contractor not required to deliver specific end product, other than reports which are merely incidental to required performance. This term does not include employment agreements.

**Subcontractor.** Any business having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with the County.

**Specification.** Any description of the physical or functional characteristics of a property, supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a property, supply, service, or construction item for delivery.

**Supplies.** All personal property, including but not limited to equipment, materials, printing, insurance, excluding real property or an interest in real property.

**Surplus Supplies or Property.** Any supplies or property that are no longer needed by the County and are designated for disposal outside of the County. This includes obsolete supplies and/or property, scrap materials, and nonexpendable supplies that have completed their useful life cycle. (See Section 2-445)

**Using Department.** Any department, commission, board, or public agency of this County requiring supplies, services, or construction procured under this Article.

**SECTION 2-423. Procurement Organization.**

(a) **Centralization of Procurement.** All rights, powers, duties, and authority relating to the purchase of equipment, supplies, and services and to the management, control, warehousing, sale, and disposal of property, equipment and surplus supplies are hereby vested in a central Procurement Department for the County subject to the legitimate authority of the County Council, the County Administrator and such ordinances, rules, and regulations as exist for the governance of the County.

(b) **Centralization of Procurement Authority.** Except as otherwise provided in this Article, the authority relating to the procurement of property, supplies, services, and construction is hereby vested in the Procurement Director of this County.

(c) **Establishment, Appointment, and Tenure.** There is hereby created the position of Procurement Director, who shall be the County's principal public procurement official. The County Administrator shall appoint the Procurement Director. The Procurement Director shall be employed with regard to his/her professional qualifications in public procurement and level of education. The Procurement Director shall be a full-time public employee of the County, and subject to the Oconee County Personnel Rules.

(d) **Authority and Duties.** Except as otherwise provided herein, the Procurement Director shall serve as the principal public procurement official of the County, and shall be responsible for the procurement of supplies, services, and construction in accordance with this Article, as well as the disposal of Surplus Supplies and Property. In accordance with this Article, the Procurement Director shall: (a) procure or supervise the procurement of all property, supplies, services, and construction services needed by the County; (b) sell, trade, or otherwise dispose of Surplus Supplies and Property belonging to the County; (c) establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the using department, for property, supplies, services, and/or construction services.

(e) **Delegation of Authority.** The Procurement Director may delegate authority to purchase certain property, supplies, services, and construction to other County officials or designees of the Procurement Department, if such delegation is deemed necessary for the effective procurement of those items, but only in accordance with the other terms and provisions of this Article.

**SECTION 2-425. DBE/SBE/MBE/WBE Utilization**

The County wishes to ensure that qualified and duly certified Disadvantaged Business Enterprises ("DBE"), Small Business Enterprises ("SBE"), Minority Business Enterprises ("MBE"), and Women's Business Enterprises ("WBE") are afforded the opportunity to fully participate in the overall procurement process of the County. In addition to any requirements set forth in state or federal mandates, the Procurement Director may include qualified DBE's, SBE's, MBE's, and WBE's on solicitation lists.

**SECTION 2-426. Specific State and Federal Law Requirements.**

(a) **Drug-free Workplace Act.** The County shall require offerors and bidders responding to any written or published solicitation issued by the County to certify in writing that the offeror or bidder is in full compliance with the requirements of the Drug-free Workplace Act as set forth in Chapter 107 of Title 44 of the South Carolina Code of Laws, 1976, as amended.

(b) **Unauthorized Aliens and Public Employment.** The County shall require offerors and bidders responding to any written or published solicitation issued by the County to certify in writing that the offeror or bidder is in full compliance with the requirements set forth in Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended, and specifically that the offeror or bidder agrees to provide to the public employer any documentation required to establish either: (a) Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended, is inapplicable to the offeror or bidder or any subcontractor or sub-subcontractor of the offeror or bidder; or (b) the offeror or bidder and any subcontractor or sub-subcontractor of the offeror or bidder is in full compliance with Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended. The offeror or bidder shall also certify that the offeror or bidder will, and at all times during the performance of work provided to the County, be in full compliance with the provisions of the Immigration Reform and Control Act of 1986 (IRCA) in the hiring of its employees, and the offeror or bidder shall indemnify, hold harmless and defend the County against any and all actions, proceedings, penalties or claims arising out of the offeror or bidder's failure to comply strictly with IRCA or Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended.

(c) **Compliance with Federal Requirements; Compliance with Disbursement and Management Requirements of Financing Documents.** Where a procurement involves the expenditure of Federal assistance or contract funds, the Procurement Director shall comply with such Federal law and authorized regulations which are mandatorily applicable, and which are not presently reflected in this Article. Where a procurement involves the expenditure of funds, which are the proceeds of bonds or certificates of participation, or other financing instruments or documents, the Procurement Director and other applicable County personnel shall comply with the terms of such financing as they relate to the disbursement of funds and management of projects, insofar as such terms are mandatorily applicable and which are not presently reflected in this Article.

**SECTION 2-427. Standards of Conduct and Ethics in Public Contracting.**

In all actions involving the procurement of property, supplies, services, or construction for the County, the provisions of Chapter 13 of Title 8 of the South Carolina Code of Laws, 1976, as amended, (the "State Ethics Act"), shall be complied with. It shall be unethical for a person or business to be retained, or to retain a person or business, to solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

**SECTION 2-428. Exemptions.**

(a) **Governmental Body and Funding Exemptions.** Contracts approved by ordinance, resolution, or other specific action of the County Council are exempt from the provisions of this Article. County Council may exempt by resolution specific items, services, or projects from the purchasing procedures required in this Article, and County Council shall retain the authority to establish by ordinance, or approve by resolution, a method of source selection other than those specified in this Article. The purchase and disposal of published books, periodicals, technical pamphlets, and other such materials by the Oconee County Public Library System are exempt from the provisions of this Article. However, the Oconee County Public Library Board of Trustees shall submit procedures



ORDINANCE 2010-02

Exhibit A

(c) **Bidders' Lists.**

i. All sources requesting to be put on a bidders' list shall be so enlisted, unless the Procurement Director makes a written determination that the source should not be enlisted in accordance with regulations.

ii. The Procurement Director shall ensure that the bidders' lists contain all identified sources interested in bidding on County procurement. The Procurement Director shall periodically review the bidders' lists and shall require the addition or deletion to such lists of sources contained therein, as deemed necessary.

(d) **Public Notice.** Adequate public notice of the Invitation to Bid shall be given for a reasonable time, not less than seven calendar days prior to the date set forth therein for the opening of bids. Such notice may include publication in print or electronic media a reasonable time prior to bid opening. The public notice shall state the place, date, and time of bid opening.

(e) **Receipt and Safeguarding of Bids.** All bids (including modifications) received prior to the time of opening shall be kept secure and unopened in a locked cabinet or safe.

(f) **Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The amount of each bid, and such other relevant information as the Procurement Director deems appropriate, together with the name of each bidder shall be recorded. Late bids shall not be opened and considered for award, but the name of the late Bidder(s) and the time of the attempted delivery shall be recorded in the bid file, wherever possible. The record (tabulation) and each bid shall be open to public inspection after award of bid in accordance with Section 2-424. The Procurement Director may record the bid opening.

(g) **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized by this Article. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The Invitations to Bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation to Bid.

(h) **Discussion with Bidders.** As provided in the Invitation to Bid, discussions may be conducted with apparent responsive bidders for the purpose of clarification if in the Procurement Director's sole judgment such clarification is necessary and beneficial to the County. Clarification of any bidder's bid must be documented in writing by the Procurement Director and shall be included with the bid file.

(i) **Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such mistakes, may be permitted subject to the following: appropriate mistakes discovered by the bidder before bid opening may be modified or withdrawn by submitting written notice to the Procurement Department prior to the time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards, or contracts, after award but prior to performance shall be supported by a written determination made by the Procurement Director.

(j) **Tie Bids.** If two or more bidders are tied in price, while otherwise meeting all of the required terms and conditions of the bid, awards may be determined as follows:

i. If there is an in-county business (active business or warehousing facility located within Oconee County) tied with an out-of-county business, the award will go to the in-county business.

ii. If there is an in-state business (active business or warehousing facility located within South Carolina) tied with an out-of-state business, the award will go to the in-state business.

iii. Tie bids involving in-County and in-State firms may be resolved by the flip of a coin in the office of the Procurement Director witnessed by all interested parties.

(k) **Award.** The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid. The Procurement Director shall approve the award of contracts up to Twenty Five Thousand Dollars (\$25,000.00) after receiving an acceptable recommendation of award from the using department. The County Administrator shall approve the award of contracts over Twenty Five Thousand Dollars (\$25,000.00), but less

ORDINANCE 2010-02

Exhibit A

(d) **Receipt of Proposals.** No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of the offeror, the number of modifications received, if any, and a description sufficient to identify the item/service offered. The register of proposals shall be open for public inspection only after contract award.

(e) **Proposal Opening.** Proposals shall be publicly opened and only the names of the offerors disclosed at the proposal opening. Contents of competing proposals shall not be disclosed during the process of negotiation. Proposals shall be open for public inspection, in accordance with Section 2-424, after contract award. Late proposals shall neither be opened nor considered for award; however, the name and address of the late offeror and the time of attempted delivery shall be recorded wherever practicable.

(f) **Request for Qualifications.** Prior to soliciting proposals, the Procurement Director may issue a Request for Qualifications from prospective offerors. Such request shall contain at a minimum a description of goods or services to be solicited by the Request for Proposals and the general scope of the work and shall state the deadline for submission of information and how prospective offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract. After receipt of the responses to the Request for Qualifications from prospective offerors, the prospective offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top three prospective offerors by means of a Request for Proposals. The failure of a prospective offeror to be selected to receive the Request for Proposals shall not be grounds for protest under Section 2-443.

(g) **Public Notice.** Adequate public notice of the Request for Qualifications shall be given in the manner provided in Section 2-430(d).

(h) **Evaluation Criteria.** The Request for Proposals shall state the criteria to be considered in evaluating proposals. Price may, but need not be, an initial evaluation criteria.

(i) **Discussion with Responsive/Responsible Offerors and Revisions to Proposals.** As provided in the Request for Proposals, discussions may be conducted with responsible offerors who submit proposals determined to be eligible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(j) **Selection and Ranking.** Proposals shall be evaluated using only the criteria stated in the Request for Proposals and there must be adherence to any weightings that have been previously assigned. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous to the County, considering only the evaluation criteria stated in the Request for Proposals. If price is an initial evaluation criteria, award shall be made in accordance with Section 2-431(k). If price is not an initial evaluation factor, negotiations shall be conducted with the top ranked responsive offeror for performance of the contract at a price which is fair and reasonable to the County. Should the Procurement Director be unable to negotiate a contract at a price which is fair and reasonable to the County, negotiations shall be formally terminated with the top ranked responsive offeror and negotiations commenced with the second most advantageous responsive offeror, and then the third and so on until a satisfactory contract has been negotiated. In conducting negotiations, there must be no disclosure of any information derived from proposals submitted by competing offerors.

(k) **Award.** Award must be made to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the County, taking into consideration price and the evaluation criteria set forth in the Request for Proposals, unless one of the options listed in Section 2-431(l) is utilized. The contract file shall contain the basis on which the award is made. Procedures and requirements for notification of intent to award the contract shall be the same as those stated in Section 2-430(k).

(l) **Other.** If, after following the procedures set forth in Section 2-431(j), a contract is not able to be negotiated, the scope of the Request for Proposals may be changed in an effort to reduce the cost to a fair and reasonable amount, and all responsive offerors must be allowed to submit their best and final offers. Where price was an initial evaluation factor, the using department, through the Procurement Director, may in his/her sole

ORDINANCE 2010-02  
Exhibit A

(b) **Purchases under Two Thousand Five Hundred Dollars (\$2,500.00).** Any purchase not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) may be accomplished without securing competitive quotations if the prices are considered to be fair and reasonable. Competitive quotations need only be taken when the Procurement Director suspects the price may not be fair and reasonable (e.g., comparison to previous price paid, personal knowledge of the price range of the item involved). Every effort should be made to distribute such purchases equitably among qualified suppliers.

(c) **Purchases over Two Thousand Five Hundred Dollars (\$2,500.00) but not exceeding Ten Thousand Dollars (\$10,000.00).** Insofar as it is practical, solicitations of written quotes from a minimum of three qualified sources of supply shall be made by the requesting department and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive/responsible source after all quotes are reviewed by the Procurement Department.

(d) **Purchases over Ten Thousand Dollars (\$10,000.00) but not exceeding Fifty Thousand Dollars (\$50,000.00).** Insofar as it is practical, solicitations of written quotes from a minimum of three qualified sources of supply shall be made by the Procurement Director. Quotes between Twenty Five Thousand Dollars (\$25,000) and Fifty Thousand Dollars (\$50,000.00) shall be advertised for a minimum of seven (7) calendar days electronically in the South Carolina Business Opportunities publication or other electronic methods. Documentation of the quotes shall be attached to the purchase requisition. The award shall be made to the lowest responsive/responsible source.

(e) Procurement reserves the authority to review any request made by a using department pursuant to this section.

(f) **Protest Rights.** The provisions of Section 2-443 shall not apply to contracts awarded under the procedures set forth in this Section.

#### **SECTION 2-433. Purchasing Card Program.**

(a) The procedures for this program shall be promulgated and amended as needed by the Procurement Director and approved by the County Administrator.

(b) This program shall be discontinued at any time as recommended by the Procurement Director and approved by the County Administrator.

(c) The Cardholder shall use the Purchasing Card for legitimate business purposes only. Misuse of the card will subject the cardholder to disciplinary action in accordance with County policies.

#### **SECTION 2-434. Sole Source Procurement.**

Any request by an agency or department head that a procurement be restricted to one potential source shall be accompanied by a letter from the using department signed by the department head stating why no other source will be suitable or acceptable to meet the needs. In such instance, a contract may be awarded for a property, supply, service, or construction item without competition when the Procurement Director determines in writing that there is only one source for the required property, supply, service, or construction item or that the proposed award to a single source is a permitted, non-competitive procurement as established herein. After verification of a sole source vendor, or the justification of a sole source purchase is warranted, the Procurement Director, has the authority to negotiate the price, terms, and conditions of the procurement. An example of a permissible, non-competitive procurement includes, but is not limited to where the Procurement Director and the Department Head have deemed the compatibility of equipment, accessories, services, systems, software or replacement parts is of paramount importance.

#### **SECTION 2-435. Emergency Procurements.**

Notwithstanding any other provision of this Article, the Procurement Director may make or authorize others to make emergency procurements of property, supplies, services, and/or construction when there exists a threat to public health, welfare, or safety under emergency conditions, provided that such emergency



**SECTION 2-437. Cancellation of Invitations to Bid or Requests For Proposals.**

An Invitation to Bid, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or part when it is in the best interest of the County. Documentation supporting the reason(s) for cancellation or rejection shall be made a part of the solicitation file. Under no circumstances will the County be liable for any costs associated with any bid or proposal. The bidder or offeror shall bear all costs associated with the preparation of bids and proposals.

**SECTION 2-438. Qualifications and Duties of Bidders and Offerors.****(a) Responsibility of Bidders and Offerors.**

i. **Determination of Responsibility.** Responsibility of the bidder or offeror shall be ascertained by the Procurement Director for each contract entered into by the County based upon full disclosure to the Procurement Director concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.

ii. **Determination of Non-responsibility.** If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Procurement Director. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

**(b) Cost or Pricing Data.**

i. **Required Submissions Relating to the Award of Contracts.** A prospective contractor shall submit cost or pricing data when the contract is expected to exceed Fifty Thousand Dollars (\$50,000.00) and is to be awarded under Section 2-431 (Competitive Sealed Proposals), Section 2-434 (Sole Source Procurement), or Section 2-442(h) (Architect-Engineer and Land Surveying Services), Section 2-430 (Competitive Sealed Bids).

ii. **Exceptions.** The submission of cost or pricing data relating to the award of a contract is not required when: (a) the contract price is based on adequate price competition; (b) the contract price is based on established catalogue price or market prices; (c) the contract price is set by law or regulation; or (d) it is determined in writing by the Procurement Director that the requirements of Section 2-438(b)i. may be waived, and the determination states the reasons for such waiver.

iii. **Required Submissions Relating to Change Orders or Contract Modifications.** A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by Competitive Sealed Bidding, whether or not cost or pricing data were required in connection with the initial pricing of the contract.

iv. **Price Adjustment Provision Required.** Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the County finds that such price was increased because the contractor furnished cost or pricing data as submitted was inaccurate, incomplete, or not current as of the date agreed upon between the County and the contractor.

v. **Certification Required.** A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

(c) **Change Orders.** The Procurement Director shall have the authority to approve all change orders and contract modifications up to Twenty Five Thousand Dollars (\$25,000.00) as long as the cumulative total contract amount does not exceed Twenty Five Thousand Dollars (\$25,000.00) and the total amount does not exceed the budgeted amount approved by County Council. The County Administrator shall approve all change orders over Twenty Five Thousand Dollars (\$25,000.00) but less than Fifty Thousand Dollars (\$50,000.00), as long as the

ORDINANCE 2010-02

Exhibit A

iv. **Lease with Purchase Option.** A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive bidding, or competitive sealed proposal, or the leased equipment is the only equipment that can meet the County's requirements, as determined in writing by the department head of the using department and the Procurement Director.

(d) **Maintenance Contracts.** All maintenance contracts and agreements must be procured by the Procurement Department. A requisition is required for all maintenance agreements regardless of the dollar amount. Whenever practical, the terms of maintenance contracts shall be resolved in connection with the original solicitation for the item or equipment, which is the subject of the maintenance contract. Maintenance contracts may be reviewed by the Procurement Director or the County Administrator for proper terms and conditions as well as fair pricing. Maintenance contracts may only be approved by the Procurement Director or the County Administrator. Renewals of existing contracts in excess of Fifty Thousand Dollars (\$50,000.00) that have already been funded by County Council in the Budget Ordinance may also be executed by the County Administrator. New contracts in excess of Fifty Thousand Dollars (\$50,000.00) where funds were not previously specifically authorized by County Council, or as the County Administrator otherwise deems necessary, must be awarded by County Council.

**SECTION 2-440. Right to Inspect Business and Audit of Records.**

(a) **Right to Inspect Business.** The County may, at reasonable times, inspect the part of the place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the County.

(b) **Auditing.**

i. **Audit of Cost or Pricing Data.** The County may, at reasonable times and places, audit the books and records of any business who has submitted cost or pricing data pursuant to Section 2-438(b) (Cost or Pricing Data) to the extent that such books and records relate to such cost or pricing data. Any business who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

ii. **Contract Audit.** The County shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or subcontract other than firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

**SECTION 2-441. Contract Terms and Specifications.**

(a) **Maximum Practical Competition.** All specifications shall be drafted so as to assure cost effective procurement for the purposes intended and encourage competition in satisfying the County's needs, and shall not be unduly restrictive. Any use of characteristics that serve to limit competition shall be avoided. The policy enunciated in this Section applies to all specifications including but not limited to, those prepared for the County by architects, engineers, designers, draftsmen, and land surveyors.

(b) **Duties of the Procurement Director and the Using Departments.** The Procurement Director may prepare or review, issue, revise and maintain the specifications for property, supplies, services, and construction required by the County. The Procurement Director may obtain expert advice and assistance from personnel of the using departments or other advisory sources in the development of specifications and may delegate to a Using Department the authority to prepare its own specifications. Specifications for property, supplies, services, or construction items exempted in Section 2-428, may be prepared by the Using Department in accordance with the provisions of this Article.

(c) **Brand Name or Equal Specification.**

ORDINANCE 2010-02

Exhibit A

3. when the parties have otherwise agreed with respect to the risk of differing site conditions.
- ii. **Price Adjustment.** Adjustments in price resulting from the use of contract clauses required in Subsection 1 of this Section shall be computed in one or more of the following ways:
    - (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
    - (b) by unit prices specified in the contract or subsequently agreed upon;
    - (c) by the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
    - (d) in such other manner as contracting parties may mutually agree; or
    - (e) in the absence of agreement by the parties, by unilateral determination by the County of the reasonable costs allocable, either directly or indirectly, to the events or situations under such clauses as accounted for in accordance with generally accepted accounting principles, and with adjustment of profit or fee, as appropriate, and subject to the provisions of Section 2-443.

A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 2-438(b) (Cost or Pricing Data).

- iii. **Standard Clauses and Their Modification.** The Procurement Director may establish, after consultation with the County Attorney, standard contract clauses, consistent with this Article and containing the mandatory provisions and the language of this Article, for use in County contracts.

**SECTION 2-442. Construction Contracts.**

- (a) **Construction Management Services, Design-Build Services, Turnkey Management Services.** County Council finds that certain non-traditional means of public construction project management can be in the best interests of the County in certain circumstances. Therefore, the following methods may be employed under the following circumstances:
  - i. The Procurement Director, with approval of the County Administrator, shall have the discretion to use construction management services, design-build services, or turnkey management services as alternatives for construction contracting administration. In exercising such discretion, the County Administrator shall consider the method which in the County Administrator's discretion is the most advantageous to the County and will result in the most timely, economical, and successful completion of the construction project. The determination of the method of source selection utilized shall be stated in writing and included as part of the solicitation file.
  - ii. If the County Administrator determines that the use of construction management services, design-build services or turnkey management services is the most advantageous means of securing the construction contracting administration set forth in this section, and the amount of services to be secured thereby is anticipated to exceed Five Million Dollars (\$5,000,000.00), the selection of the method of construction contracting administration used by the County and set forth in this section shall be submitted for review and approval by the County Council, which will make findings of fact to support any decision to use such services.
  - iii. The competitive sealed proposal method of construction contracting administration, using Requests for Proposals prepared in accordance with section 2-431, is the most advantageous to the County, and the County shall use the competitive sealed proposal method as set forth in Section 2-431 for the purposes of procuring construction management services, design build services, or turnkey management services or any other similar type of construction management contract. The County Administrator may retain outside consulting services to prepare such Requests for Proposals. The Request for Proposals for any of these services shall set forth the criteria which the County will be using to select the successful proposal.



ORDINANCE 2010-02

Exhibit A

the basis of demonstrated competence and qualification for the particular type of services required and at fair and reasonable prices.

- ii. **On Call Professional Services.** A broad range of architect, engineer and land surveying services may be available through an on-call, as needed professional service contract. For illustration purposes, the following elements should be basic to this type of contractual agreement: (a) agreements may be multi-year, (b) agreements will establish hourly rates for each type of service and other charges, (c) agreements will not provide any guarantee of projects, nor identify any specific project to be assigned, (d) as specific projects are assigned, the County will execute a simple contract modification to add the project and to detail the project's specific scope and services to be provided, the agreed upon number of hours and the time frame for completion, and (e) if the Procurement Director is not satisfied with an architect, engineer and land surveying business's proposal to provide services, the Procurement Director may negotiate with another architect, engineer and land surveying business with an on-call agreement to pursue a more acceptable proposal for the project.
- iii. In the procurement of architect-engineer and land surveying services, the Procurement Director shall publically request architect, engineer and land surveying businesses to submit a statement of qualifications and performance data. The request must include, but not be limited to, the project title, the general scope of work, a description of all professional services required, the submission deadline, and how interested businesses may apply for consideration.
- iv. **Selection Process.** A selection committee composed of the Procurement Director, head of using department in need of the architect-engineer or land surveying services, and those determined to be qualified to make an informed decision as to the most competent and qualified business for the proposed project, shall conduct interviews with at least three (3) businesses deemed most qualified to provide the required services on the basis of information available before the interviews. The selection committee shall evaluate each of the businesses interviewed in view of their:
  - (a) past performance;
  - (b) the ability of professional personnel;
  - (c) demonstrated ability to meet time and budget requirements;
  - (d) location and knowledge of the locality of the project if the application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project;
  - (e) recent, current, and projected workloads of the business;
  - (f) creativity and insight related to the project;
  - (g) related experience on similar projects;
  - (h) volume of work awarded by the using department to the business during the previous five years, with the objective of effectuating an equitable distribution of contracts by the County among qualified architect, engineer and land surveying businesses including Disadvantaged Business Enterprises, Small Business Enterprises, Minority Business Enterprises, and Women's Business Enterprises; and
  - (i) any other special qualification required pursuant to the solicitation.

Based upon these evaluations, the selection committee shall select the three (3) businesses that, in its judgment, are the best qualified, ranking them in priority order. The selection committee's report ranking the three (3) chosen businesses must be in writing and include data substantiating its determinations.

- v. **Notice of Selection and Ranking.** When it is determined by the Procurement Director that the ranking report is final, written notification of the highest ranked business must be sent immediately to all businesses responding to the solicitation.
- vi. **Negotiation of Contract.** The selection committee shall negotiate a contract with the highest qualified business for architect-engineer or land surveying services at compensation which is considered to be fair and reasonable to the County. In making this decision, the committee shall take

ORDINANCE 2010-02  
Exhibit A

(d) **Notice of Decision on Protests.** A copy of the decision under Subsection 2-443(d) of this Section shall be mailed or otherwise furnished to the protestant.

(e) **Finality of Decision on Protests.** A decision under Subsection 2-443(c) of this Section shall be final and conclusive, unless a business adversely affected by the decision appeals administratively to the County Council in accordance with this Section.

(f) **Authority to Debar or Suspend.** After reasonable notice to the business or person involved and reasonable opportunity for that business or person to be heard, the Procurement Director shall have authority to debar a business or person for cause from consideration for award of contracts. The Procurement Director shall also have the authority to suspend a business or person from consideration for award of contracts if there is probable cause to believe that the business or person has engaged in any activity which might lead to debarment. The period of debarment or suspension shall be as prescribed as appropriate by the Procurement Director.

(g) **Causes for Debarment or Suspension.** The causes for debarment or suspension shall include, but not be limited to, the following:

- i. Conviction of a business or any of its principal officers or employees for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- ii. a determination by the Procurement Director that the business, as an offeror or bidder engaged in misuse of the County's protest procedure, including, but not limited to, the filing of frivolous protests or appeals, the filing of protests or appeals whereby it is clear that the basis of an appeal would not result in the protestant being awarded a contract under a solicitation, or the filing of protests or appeals intended to cause delay in awarding a contract;
- iii. a determination by the Procurement Director that the business as an offeror or bidder engaged in collusion or other anti-competitive practices;
- iv. conviction of a business or any of its principal officers or employees under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, or directly affects responsibility as a County contractor;
- v. conviction of a business or any of its principal officers or employees under State or Federal antitrust statutes arising out of the submission of bids or proposals;
- vi. violation by a business or any of its principal officers or employees of contract provisions of a character which is regarded by the Procurement Director to be so serious as to justify debarment action;
- vii. deliberate failure of the business without good cause to perform in accordance with the Specifications or within the time limit provided in a contract with the County;
- viii. a recent record by the business of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- ix. any other cause the Procurement Director determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for cause; or
- x. for violation by a business or any of its principal officers or employees of the ethical standards set forth in Chapter 13 of Title 8 of the South Carolina Code of Laws, 1976, as amended (the State Ethics Act).

(h) **Decision on Debarment or Suspension.** The Procurement Director shall issue a written decision to debar or suspend. The decision shall:

- i. state the reasons for the action taken; and

ORDINANCE 2010-02

Exhibit A

- i. cancelled; or
- ii. revised to comply with the law and rebid; or
- iii. revised to comply with the law and awarded in a manner that complies with the provisions of this Article.

**b. Remedies After An Award.** If after an award of a contract, it is determined that the solicitation or award is in violation of law, then:

- i. if the business awarded the contract has not acted fraudulently or in bad faith:
  1. the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the County; or
  2. the contract may be terminated and the business awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to the termination.
- ii. if the business awarded the contract has acted fraudulently or in bad faith:
  1. the contract may be declared null and void; or
  2. the contract may be ratified and affirmed if such action is in the best interest of the County, without prejudice to the County's right to such damages as may be appropriate.

**SECTION 2-444. Intergovernmental Relations.**

(a) **Cooperative Procurement Authorized.** The Procurement Director may either participate in, sponsor, conduct, or administer a cooperative procurement agreement for the procurement of property, supplies, services, or construction services with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such cooperative procurement may include, but is not limited to, joint or multi-party contracts between Public Procurement Units. Examples of such cooperative procurement are General Services Administration (GSA) contracts, supplies and/or services procured from another governmental agency, and the U.S. Communities Government Purchasing Alliance.

(b) **Safe, Acquisition or Use of Supplies.** The Procurement Director may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of this Article.

(c) **Cooperative Use of Supplies or Services.** The Procurement Director may enter into an agreement, independent of the requirements of this Article, with any Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

(d) **Joint Use of Facilities/Equipment.** The Procurement Director may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another Public Procurement Unit under the terms agreed upon between the parties.

(e) **Use of State Contracts.** The Procurement Director may, independent of the requirements of this Article, procure supplies, services or construction items through the contracts established by the Purchasing Division of the State as provided in Chapter 35 of Title 11 of the South Carolina Code of Laws, 1976, as amended (State Consolidated Procurement Code).

**SECTION 2-445. Supply Management.**

(a) **Receiving and Inventory Regulations.** The Procurement Director shall promulgate regulations and procedures to insure proper receipt, identification, and inventory control for all supplies purchased for County use.

(b) **Prequalification of Suppliers.** Prospective suppliers may be prequalified for particular types of property, supplies, services, and/or construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to such prequalified suppliers.

STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE  
**ORDINANCE 2010-04**

**AN ORDINANCE TO AMEND THE AGREEMENT AUTHORIZED BY  
ORDINANCES NO. 2006-027 AND 2008-017 RELATING TO THE  
INDUSTRIAL/BUSINESS PARK OF OCONEE AND PICKENS  
COUNTIES SO AS TO ENLARGE THE PARK.**

**WHEREAS**, pursuant to Ordinance No. 2006-027 enacted on December 5, 2006 by Oconee County Council, Oconee County (the "County") entered into an Agreement for Development of Joint County Industrial and Business Park dated as of January 16, 2007 with Pickens County (the "Agreement"), which was subsequently amended by Ordinance No. 2008-17 enacted on October 21, 2008 by the County resulting in the Agreement as amended by the First Amendment to the Agreement dated November 3, 2008 (hereinafter collectively referred to as the "Park Agreement"); and

**WHEREAS**, pursuant to Section 3 of the Park Agreement, the boundaries of the park created therein (the "Park") may be enlarged pursuant to ordinances of the respective County Councils of the County and Pickens County; and

**WHEREAS**, the County is desirous of enlarging the Park by the addition of the property described on Exhibit A of the Second Amendment to the Agreement, attached hereto;

**NOW, THEREFORE**, be it ordained by Oconee County Council that the Park Agreement is hereby and shall be amended by the Second Amendment to the Agreement to include the property in Oconee County described in the schedule attached to the Second Amendment to the Agreement as Exhibit A (as such description may be hereafter refined), and that the Chairman of Oconee County Council is hereby authorized to execute and deliver any desired amendments to the Park Agreement necessary to accomplish the aforesaid enlargement.

Section 1. The Chairman of the County Council and the Clerk of the County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the Second Amendment to the Agreement and the performance of all obligations of the County under and pursuant to the Second Amendment to the Agreement and this Ordinance.

Section 2. All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.



Addition to Exhibit A (Oconee County)  
Agreement for Development of Joint County  
Industrial Park dated as of January 16, 2007,  
Amended on November 3, 2008  
and May 4, 2010  
Between Oconee County and Pickens County

**Tract 3      Greenfield Automotive Industries, Inc.**

All that piece, parcel or tract of land situate, lying and being in the County of Oconee, State of South Carolina, located on the Southern side of U.S. Highway 76 and 123 and being more particularly shown and designated as a tract of land containing 78.20 acres, more or less, on a plat entitled "Plat of a Tract of Land Surveyed at the Request of The First National Bank of Boston" by Farmer & Simpson Engineers, dated June 3, 1986 and recorded in the office of the Clerk of Court of Oconee County, South Carolina in Plat Book P-51 at page 132, and being more particularly described, according to said plat as follows:

Beginning at an iron pin (P.O.B.) located on the southwester edge of the right of way for U.S. Highway 76 and 123 and at the northwestern most corner of said tract of land (said corner being a common corner with the northeastern most corner of lands now or formerly of Delta Corporation) and running thence along the southwestern edge of the right of way for U.S. Highway 76 and 123 S 63 degrees - 19' E 1,890.8 feet to an iron pin corner; thence S 22 degrees - 57' W 456.9 feet to an iron pin corner; thence S 02 degrees - 07' E 261.1 feet to a nail and bottle top; thence S 38 degrees - 42' W 243.9 feet to a nail and bottle top located within the right of way for Highway S-439; thence S 32 degrees - 40' W 248.5 feet to a nail and bottle top located in the center of the right of way for Highway S-439; thence S 25 degrees - 27' W 240.3 feet to an iron pin corner; thence N 86 degrees 32' W 249.9 feet to an iron pin corner; thence S 86 degrees-19' W 593.3 feet to an iron pin corner; thence S 09 degrees - 16' W 241.6 feet to an iron pin corner; thence N 78 degrees - 56' W 673.4 feet to an iron pin corner; thence N 05 degrees - 25' W 398.7 feet to an iron pin corner; thence N 09 degrees - 32' E 798.4 feet to an iron pin corner; thence N 23 degrees - 02' W 365.0 feet to an iron pin corner; thence N 75 degrees - 09' E 132.3 feet to an iron pin corner; thence N 24 degrees - 28' E 796.4 feet to the POINT OF BEGINNING. Said tract of land is bounded on the North by the right of way for U.S. Highway 76 and 123, on the East by lands of various owners, on the South by lands now or formerly of Clemson University and U.S. Government Hartwell Reservoir and on the West by lands now or formerly of U.S. Government Hartwell Reservoir and Delta Corporation.

LESS AND EXCEPT all that certain piece, parcel or tract of land conveyed from Greenfield Industries, Inc., predecessor in interest of Grantor herein, by deed dated December 22, 2003, and recorded on December 31, 2003, in the Office of the Register of Deeds of Oconee County, South Carolina in Book 1302, page 345.

LESS AND EXCEPT all that certain piece, parcel or tract of land conveyed from Greenfield Industries, Inc., predecessor in interest of Grantor herein, by deed dated March 4, 1996 and recorded on April 10, 1996 in the Office of the Register of Deeds of Oconee County, South Carolina in Book 857, page 305.

BEING commonly referred to as 2501 Davis Creek Road, Seneca, Oconee County, South Carolina and as Tax Map/Parcel Numbers 226-00-04-006 and 226-00-04-020.



STATE OF SOUTH CAROLINA	)	
	)	SECOND AMENDMENT OF AGREEMENT
COUNTY OF OCONEE	)	FOR DEVELOPMENT OF JOINT COUNTY
COUNTY OF PICKENS	)	INDUSTRIAL/BUSINESS PARK

THIS AGREEMENT for the second amendment of an agreement for the development of a joint county industrial/business park located both within Oconee County, South Carolina and Pickens County, South Carolina, such original agreement dated as of January 16, 2007, and subsequently amended on November 3, 2008, by and between the County of Oconee and the County of Pickens both political subdivisions of the State of South Carolina (the "Agreement"), is made and entered into as of this 4th day of May, 2010 by and between the parties hereto (the "Second Amendment to Agreement").

### RECITALS

WHEREAS, pursuant to the Agreement, Oconee County, South Carolina ("Oconee County"), and Pickens County, South Carolina ("Pickens County") in order to promote economic development and thus provide additional employment opportunities within both of said counties, have established in Oconee County and Pickens County a Joint County Industrial and Business Park (the "Park"); and

WHEREAS, as a consequence of the establishment of the Park, property therein is exempt from ad valorem taxation, but the owners or lessees of such property are required to pay annual fees in an amount equal to that amount for which such owner or lessee would be liable except for such exemption; and

WHEREAS, pursuant to the Agreement, Oconee County and Pickens County have agreed to accept responsibility for the costs of infrastructure, maintenance, management, promotional costs, and other appropriate costs associated with the establishment and operation of the Park; and

WHEREAS, Oconee County and Pickens County desire to amend the Agreement, as previously amended, as more specifically provided below:

NOW, THEREFORE, in consideration of the mutual agreement, representations and benefits contained in this Second Amendment to Agreement and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. **Binding Agreement.** This Second Amendment to Agreement serves as a written instrument amending the entire Agreement between the parties, as previously amended, and shall be binding on Oconee County and Pickens County, their successors and assigns.

2. **Authorization.** Article VIII, Section 13(d), of the Constitution of South Carolina (the "Constitution") provides that counties may jointly develop an industrial or business park with other counties within the geographical boundaries of one or more of the member counties, provided that certain conditions specified therein are met and further provided that the

WITNESS our hands and seals of this 4th day of May 2010.

OCONEE COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Reginald T. Dexter, Chairman of County Council  
Oconee County, South Carolina

By: \_\_\_\_\_  
Elizabeth G. Hulse, Clerk to County Council  
Oconee County, South Carolina

**EXHIBIT A  
LAND DESCRIPTION  
OCONEE COUNTY**

**TRACT 1**

Timken US Corporation  
430 Torrington Road  
Walhalla, South Carolina 29691

All that certain piece, parcel or tract of land situate, lying and being in West Union School District, Oconee County, South Carolina, containing 103.45 acres, more or less, as will appear by plat thereof prepared by Schumacher Engineering Services, Dated September 23, 1966, revised November 9, 1966 and February 20, 1967, recorded in Plat Book P-29, page 132 in the office of the Clerk of Court for Oconee County, South Carolina. BEGINNING at a point in the center of Road S 37-324, thence S 75-13 E 34.7 feet to an iron pin corner, old; thence S 75-13 E 1464.6 feet to an iron pin corner; old; thence S 18-16 W 1418.89 feet to an iron pin corner, new; thence N 73-32 W 811.15 feet to an iron pin corner, old; thence S 05-28 W 481 feet to an iron pin corner, old; thence N 74-34 W 1248.93 feet to an iron pin corner, new; thence N 15-32 E 445.85 feet to I.P.O.; thence N 70-08 W 124.93 feet to I.P.O.; thence N 15-20 E 1604.90 feet to I.P.O.; thence N 74-38 W 1050.31 to a stone corner, old; thence N09-41 W 237.32 feet to I.P.O.; thence N 76-47 E 1351.79 feet to a nail in the center of bituminous road, designated Point "B"; thence S 26-42 E 474.8 feet along center of road to a nail; thence S 23-51 E 276.8 feet along center of road to a nail; thence S 16-07 E 264.8 feet along center of road to a nail; thence S 09-20 E 222.8 feet along center of road to point designated Point "A"; same being the point of beginning. Said tract being the major portion of a tract of land conveyed to the Torrington Company (Maine) by Piedmont-Oconee Corp. by deed dated June 17, 1960, recorded in Deed Book 8-F, page 8, and the property conveyed by deed of Leroy C. Martin and Raleigh L. Martin to the Torrington Company (Maine) dated January 25, 1967, recorded in Deed Book 10-B at page 35, which said conveyance was made to make the center line of road the property line and by deed of James Robert LeCroy to the Torrington Company (Maine) dated February 14, 1967, recorded in Deed Book 10-B, page 34 which deed was made to make the center line of road the line; less a strip of land conveyed by The Torrington Company (Maine) to James Robert LeCroy by deed dated July 25, 1967, recorded in Deed Book 10-E, page 87, which deed was made for the purpose of making the center line of the road the property line.

**TRACT 2**

BorgWarner Torqtransfer Systems Inc.

All that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Oconee, Township of Seneca, containing 78.176 acres, more or less and shown and more fully described by metes and bounds on plat of survey thereof made by R. Jay Cooper, P.E. & L.S. dated April 6, 1990, which plat is recorded in the Office of the Clerk of Court for Oconee County in Plat Book A-54, pages 9 and 10 and which is incorporated herein by reference.

**EXHIBIT B  
LAND DESCRIPTION  
PICKENS COUNTY**

## NOTICE OF PUBLIC HEARING

There will be a public hearing on an ordinance with respect to the approval by Oconee County, South Carolina of the Second Amendment of the Joint County Industrial and Business Park Agreement between Oconee County, South Carolina and Pickens County, South Carolina. The property to be included in the Industrial Business Park includes Greenfield Automotive Industries, Inc. which is located at 2501 Davis Creek Road Seneca, South Carolina 29678. Said public hearing is to occur at a meeting of the Oconee County Council in the Administration Building, 415 South Pine Street, Walhalla, South Carolina on Tuesday, May 4, 2010 at 7:00 p.m.

OCONEE COUNTY, SOUTH CAROLINA

Reginald T. Dexter  
Chairman of County Council





**PUBLIC HEARING  
SIGN IN SHEET  
OCONEE COUNTY COUNCIL MEETING  
DATE: May 4, 2010 7:00 p.m.**

**Ordinance 2010-04** "AN ORDINANCE TO AMEND THE AGREEMENT AUTHORIZED BY ORDINANCES 2006-27 AND 2008-17 RELATING TO THE INDUSTRIAL/BUSINESS PARK OF OCONEE AND PICKENS COUNTIES SO AS TO ENLARGE THE PARK" along with the Second Amendment of Agreement for Development for Joint Industrial Park.

Public comment will be limited to four minutes per person.

Written comments may be submitted at any time prior to the hearing for inclusion in the official record of the meeting.

**Please PRINT your name**

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NONE

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STATE OF SOUTH CAROLINA  
OCONEE COUNTY  
**RESOLUTION R2010-05**

**A RESOLUTION AUTHORIZING THE TERMINATION OF AN EXISTING AGREEMENT, DATED JULY 18, 2006, AND AUTHORIZING A USE AND MAINTENANCE AGREEMENT WITH THE SOUTH CAROLINA FOOTHILLS HERITAGE FAIR, ALL WITH REGARDS TO THAT CERTAIN OCONEE COUNTY PROPERTY LOCATED, GENERALLY, AT 1220 HIGHWAY 59, FAIR PLAY, SOUTH CAROLINA; AND OTHER MATTERS RELATED THERETO.**

**WHEREAS**, Oconee County, South Carolina ("Oconee County"), is a body politic and corporate and a political subdivision of the State of South Carolina and owns certain real property within Oconee County, located at 1220 Highway 59, Fair Play, South Carolina 29643 (the "Property"); and,

**WHEREAS**, on July 18, 2006, Oconee County entered into an agreement with John R. Harris for certain use and maintenance of the Property (the "Harris Agreement"), a copy of which is attached hereto as **Exhibit A**, and incorporated herein by reference; and,

**WHEREAS**, Oconee County desires to terminate the Harris Agreement with Mr. Harris, in accordance with the terms of that agreement, so that Oconee County may agree to allow the South Carolina Foothills Heritage Fair (the "Heritage Fair"), an ecumenical organization, duly organized under the laws of the State of South Carolina, to use and maintain the Property; and,

**WHEREAS**, Oconee County and the Heritage Fair desire to enter into a Use and Maintenance Agreement ("Use and Maintenance Agreement") attached as **Exhibit B**, and incorporated herein by reference.

**NOW, THEREFORE**, be it resolved by Oconee County Council in meeting duly assembled that:

1. Oconee County, acting by and through the Oconee County Council, hereby authorizes the termination of the Harris Agreement, in accordance with the terms of that agreement, and hereby directs the Oconee County Administrator to provide any necessary notification as set forth in the Harris Agreement and to take all other steps and actions as are necessary or appropriate to terminate the Harris Agreement, on behalf of Oconee County.
2. Oconee County, acting by and through the Oconee County Council, hereby authorizes and approves the Use and Maintenance Agreement, to go into effect on or after the termination of the Harris Agreement.
3. The Oconee County Administrator is hereby authorized to negotiate minor changes to the terms and conditions of the Use and Maintenance Agreement, so long as such minor changes are not materially adverse to Oconee County and so long as the final terms and conditions are substantially similar to the terms and conditions set forth in the Use and Maintenance Agreement.
4. The Oconee County Administrator is hereby authorized and directed to execute and deliver the Use and Maintenance Agreement on behalf of Oconee County, and to take all other steps and actions as are necessary or appropriate to effectuate the Use and Maintenance Agreement.
5. All orders and resolutions in conflict herewith are, to the extent of such conflict only, repealed and rescinded.

6. Should any part or portion of this resolution be deemed unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such finding shall not affect the remainder hereof, all of which is hereby deemed separable.
7. This resolution shall take effect and be in force immediately upon enactment.

**APPROVED AND ADOPTED** this 4<sup>th</sup> day of May, 2010.

OCONEE COUNTY, SOUTH CAROLINA

By:

\_\_\_\_\_  
Reginald T. Dexter, Chairman of County Council  
Oconee County, South Carolina

**ATTEST:**

By:

\_\_\_\_\_  
Elizabeth G. Hulse,  
Clerk to County Council

## USE AND MAINTENANCE AGREEMENT

THIS USE AND MAINTENANCE AGREEMENT ("Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010 by and between Oconee County (the "County") and the South Carolina Foothills Heritage Fair ("User") (hereinafter collectively referred to as the "Parties").

In consideration of the mutually dependent responsibility to maintain and the grant of the right to use the premises described herein, and the agreements hereinafter contained, County and User hereby covenant and agree as follows:

1. **Use of Property as Fairgrounds:** County hereby grants to User certain rights, privileges, responsibilities and liabilities as hereinafter defined to use and maintain the property located at 1220 Hwy. 59, Fair Play, SC 29643 (the "Property"), more particularly described on the attached Exhibit "A" and incorporated herein by reference. The Property shall be used only for fairs, exhibitions and related activities, as well as agricultural related activities, subject, however, to any authority and responsibility of User to maintain and manage specific aspects of the Property as provided herein. Any access to the Property is subject to County's use of the Property. County may continue to market the Property, show the Property, and sell the Property, and County's own use of the Property for direct County needs shall pre-empt User's use of the Property. The Property shall be used only for the rights and privileges granted herein, and no use of the Property shall be inconsistent with the primary use of the Property for fairs, exhibitions and related activities, or inconsistent with County's ownership of the Property. Any and all rights, privileges, responsibilities and liabilities granted herein are subject to and subordinate to County's ownership of the Property and no rights or privileges granted herein shall be construed to grant any superior rights or rights greater than those held by County.

2. **Term and Termination:**

A. *Term of Agreement.* The initial term (the "Term") of this Agreement shall commence on \_\_\_\_\_, 2010 (the "Commencement Date") and shall expire on \_\_\_\_\_, 2011, a date one (1) year after the Commencement Date. Thereafter, this Agreement may be renewed, in writing, for the same or a different term length, only with the mutual written consent of the Parties.

B. *Termination for Convenience.* Either party may terminate this Agreement for any reason or no reason upon a thirty (30) day advance written notice to the other party.

C. *Partial Severability.* County may, in County's discretion and with no further obligation to User, amend this Agreement and the rights and responsibilities contained herein, upon thirty (30) days written notice, with regard to any portion of the Property for which County has a direct County need. In such case, County will state the specific portion of the Property to which this Agreement shall no longer apply.

3. **Conditions:** Attached hereto as Exhibit "B" and incorporated herein is a general concept plan (the "Concept Plan") for the improvement of the Property. County and User acknowledge that use of the Property for fairs, exhibitions and related uses contemplated by this Agreement will not exist without the provision of maintenance of the Property by User, parking support, and material restoration and improvements of the Property by User. Consequently, the following are conditions of this Agreement:

A. *Restoration of Pole Barn and Silo.* Subject to the contingencies and required approvals herein, User shall restore, preserve and maintain the pole barn and metal grain silo currently located on the Property, and User may paint any or all of said structures, in User's discretion, so long as such painting is consistent with the Concept Plan and agricultural theme of User's activities, and not inconsistent with local or state laws or County's use or marketing of the Property.

B. *Restoration or Demolition of Barn.* Subject to the contingencies and required approvals herein, User shall restore, preserve and maintain the barn currently located on the Property, and User may paint the barn, in User's discretion, so long as such painting is consistent with the Concept Plan



and agricultural theme of User's activities, and not inconsistent with local or state laws or County's marketing or use of the Property. Notwithstanding the above, with County's prior written approval, not to be unreasonably withheld or delayed, User may demolish and/or burn the barn, so long as such activities are consistent with the Concept Plan, and not inconsistent with local or state laws or County's use or marketing of the Property, and conducted with approval from, and under the oversight of, the necessary fire authorities, as needed.

*C. Maintenance of Property.* User shall be solely responsible for the continued maintenance of the Property during the Term, including, without limitation, User shall bushhog, or otherwise cut and remove the hay from all cleared areas and pasture land of the Property at least two (2) times per year, less and excepting the large gully portion of the Property.

*D. Parking.* In addition to the public parking on the Property, User shall furnish and regulate reasonable access to parking for visitors to the Property during the term of this Agreement. User shall have the right to designate where and how such parking shall occur and the right to relocate or reconfigure such parking from time to time as user may deem appropriate, and shall be responsible for public parking on the Property.

*E. Access.* The public will have access to the Property by way of public streets, but to the extent any additional entrances to the Property require passage across private property, User may designate the entrances to the Property in accordance with the Concept Plan, and, to the extent any additional entrances require passage across private property, User shall provide and secure such passage for County and public use. User shall regulate, control, and govern public access to all structures on the Property in such a manner as to ensure only such access shall occur as is safe for the structure(s) involved.

4. **User Costs.** User shall be responsible for the following costs:

A. Capital costs associated with improvements constructed by User.

B. Costs associated with User's use and maintenance of the Property.

C. Maintenance costs associated with the improvement, restoration and maintenance of the Property by User.

D. Costs associated with access to the Property, except as otherwise noted herein.

E. Costs of all utilities used by User.

F. Costs of insurance and such other matters as are reasonably necessary to comply with the terms of the Agreement.

5. **User's Rights:** Subject to the improvement approval process described herein, User shall have the following rights with regard to the Property:

*A. Right to Use Property as Fairgrounds.* User may use the Property for a maximum of four events (festivals, fairs, exhibitions, or agricultural themed activities) during the Term, in accordance with the Concept Plan, so long as such events are not inconsistent with local or state laws or County's use or marketing of the Property.

*B. Right of First Refusal.* If County continues to allow use of the Property for general public recreation and access, including use of the Property for fairs, exhibitions and related activities, User shall have the right of first refusal, and first right of renewal for such use.

*C. Right of Access.* User may have access for ingress and egress to and from such improvements and over, across and under the Property for the uses and obligations contemplated herein.

*D. Right to Build and Maintain Improvements.* User shall have the right to construct, replace,

maintain, and access at all times the improvements shown on the Concept Plan provided that (i) such improvements are constructed without cost to County, (ii) such improvements are not inconsistent with County's marketing of the Property, and (iii) such improvements are not inconsistent with local or state laws. Subject to the contingencies and required approvals herein, User shall, at minimum, grade and landscape the Property in accordance with the Concept Plan.

*E. Right to Construct and Maintain Temporary Structures.* Subject to County's prior written approval, not to be unreasonably withheld or delayed, User shall have the right to construct and maintain temporary structures, provide such equipment and make such improvements upon the Property as may be necessary to implement the Concept Plan. No improvements shall be made to the Property except in accordance with such Concept Plan.

*F. Right to Operate.* User may operate buildings, structures, and other improvements described herein, only for the uses and obligations contemplated herein.

*G. Right to Install Signage.* User may install and display temporary signage so long as the signage is consistent with the agricultural theme of their activities, and not inconsistent with local or state laws or County's use or marketing of the property.

*H. Right to Plant and Harvest.* User may plant, cultivate, and harvest experimental or demonstration crops on the Property which meet all federal and state laws, guidelines and requirements and in accordance with the Concept Plan. User may harvest, use, and sell any hay cut on the Property during the Term.

*I. Right to Clear.* User may clear the Property of all underbrush and undesirable shrubbery and growth, but not commercially harvestable timber. Unless otherwise authorized, in writing, by County, User shall not cut or remove or damage any trees of more than four (4) inches in diameter, measured three (3) feet above the ground.

*J. Right to Install Security Measures.* User may exercise reasonable precautions to protect the Property, for County and for User's activities, including, without limitation, non-permanent security devices, including gates, in accordance with the Concept Plan, so long as such precautions are not inconsistent with local or state laws or County's use or marketing of the Property and County is not denied reasonable access for County's own use of the Property.

*K. Right to Install Temporary Utilities.* User may install, operate, maintain, repair and replace necessary temporary utilities across, over or under the Property in accordance with the Concept Plan, so long as the temporary utilities are not inconsistent with local or state laws or County's use or marketing of the Property and are removed at the discretion and written instruction of County.

*L. Right to Install Permanent Utilities.* With County's prior written approval, not to be unreasonably delayed, User may install, operate, maintain, repair and replace necessary permanent utilities across, over or under the Property in accordance with the Concept Plan and not inconsistent with local or state laws or County's use or marketing of the Property.

*M. Right to Perform Grading Work.* User may perform rough grading work on the emergency north entranceway, in accordance with the Concept Plan and only to the extent necessary to allow emergency vehicles to get to the area to be used for the fairgrounds other than on the primary access road.

6. **County's Rights.** Without limiting, and in addition to, County's ownership rights to the Property, County shall have the following specific rights with regard to the Property during the Term:

*A. Right to Install Utilities.* County, in County's sole discretion, may install, operate, maintain, repair and replace utilities across, over and under the Property.

*B. Construction of Entrances.* County, in County's sole discretion, may construct the south

entrance to the Property, and may perform necessary work on the north entrance to the Property.

C. *Right of Access.* County will have the right of access, including, without limitation, the right to market and show the Property. User shall provide to County and its authorized employees, representatives and agents unrestricted access to any and all of the improvements on the Property for purposes of inspections or emergency response and, if necessary for access, shall provide County with keys or combinations to allow for such access. Notwithstanding the foregoing, no secured portion of User's operational facilities shall be subject to inspection except in the company of User's representatives, unless otherwise provided by law.

7. **County's Additional Obligations.**

A. *Temporary Waterline.* County shall dig a trench for a temporary waterline from the north entrance to the Property, off of Hwy 59, approximately one thousand feet (1000') into the Property, to the location of an existing gate.

B. *Widening of Road.* County shall widen the existing farm road to be used by User to approximately twenty feet (20') or otherwise wide enough for two lanes into the Property, and an emergency lane out of the Property.

C. *Emergency Entrance.* County shall cut an emergency entrance at the north entrance to the Property and will gravel only the first part of that entranceway.

8. **Safety and Security.** Subject to the prior approval of County, User shall have the right to establish reasonable rules for use of the Property, including conduct and curfew rules. In accordance with existing policy, the Sheriff's department, appropriate local EMS units and County Fire Protection Service units shall remain responsible for general safety and security at the Property, and User shall work with such departments and units to:

A. Coordinate any rules and assure their legal enforceability;

B. Coordinate patrol patterns and communications to provide appropriate security but minimize burdens on the Sheriff's department and other units;

C. Provide additional private or public security and/or traffic control for special events in accordance with applicable County policies;

D. Coordinate any additional security which User may choose to provide from time to time;

E. Allow the Sheriff's department, local EMS units and County Fire Protection units access to the Property; and,

F. Promptly notify County of any problems that User or its employees or agents become aware of, including, without limitation, damage to the Property, any problems with the Property, any dangerous conditions, any injury to guests, licensees or invitees, or anything else that may require immediate attention. In the event of an emergency, User or its employees or agents should contact 911.

9. **Condition of Property.** User shall accept the use and maintenance of the Property in its present condition, as-is, where-is, without any liability or obligation on the part of County to make any alterations, improvements or repairs of any kind on or about the Property except for as provided hereinabove.

A. Any alterations or improvements (not specifically shown in the approved Concept Plan) must be approved in writing by County, which approval shall not be unreasonably withheld or delayed prior to their installation or construction. Such alterations or improvements to the Property shall be at the expense of User during the term of this Agreement (except to the extent that they are funded by some third party source other than County). All permanent alterations, improvements and repairs to the Property made by User will become the property of County upon completion of said alterations,



improvements or repairs and User will have such obligations relating thereto and such rights therein as are set forth in this Agreement.

B. User agrees that User will pay all liens of contractors, subcontractors, mechanics, laborers, materialmen and other like parties and will indemnify County against all legal costs and charges, bond premiums for release of liens, including legal counsel fees and costs reasonably incurred in and about the defense of any suit in discharging the Property or any part thereof from any liens, judgments or encumbrances caused by User. Provided, however, that User shall have no obligation to pay any party who has filed a lien against the Property if User has a dispute over the amount owed or the work performed by such party so long as User has posted a bond or other surety instrument in an amount equal to one and one third times the amount of such lien.

10. **Not For Profit.** During the Term, User shall maintain its not-for-profit, eleemosynary status in good standing with the South Carolina Secretary of State and the United States Internal Revenue Service.
11. **Accounts, Records and Receipts.** Unless otherwise prohibited by law, all monies received by User from operations conducted on the Property, including but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by User for the administration, maintenance, operation and development of the Property and the activities conducted by the User on the Property. User shall establish and maintain accurate records and accounts and provide an annual statement of such receipts and expenditures to County. County shall have the right to perform audits or to require User to audit the records and accounts of User, third party concessionaires and any other third parties collecting access or User fees on the Property in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Accountants or by the state, and furnish County with the results of such audit.
12. **Insurance.** User shall carry and pay the premium on a general liability insurance policy with a single combined limit of not less than Five Million Dollars (\$5,000,000.00) to protect against bodily injury or property damage and to file a copy of said policy with County annually; said policy shall give protection to the public, User's agents, User's employees, and User's licensees in connection with all activities or events engaged in by User in its use, maintenance and operation of the Property. The insurance required by this Agreement shall, at a minimum, be issued by insurance companies authorized to do business in the State of South Carolina, with a financial rating of at least an A+3A status as rated in the most recent edition of Bests Insurance Reports and shall name County as an additional insured at the cost of User. User agrees to furnish County with a copy of certificates or binders evidencing the existence of the insurance required herein within forty five (45) days of the execution of this Agreement. County must receive at least ten days' prior written notice of any cancellation of User's insurance coverage.

County shall not be liable to User or User's employees, agents, representatives, officers, directors, members, partners or licensees for any damage whatsoever to persons or property of User or User's employees, agents, representatives, officers, directors, members, partners or licensees for occurrences on the Property.

13. **Sublease/Assignment/Ownership Interests.** Without the prior written approval of County, User will not transfer or assign any interest or privilege of User hereunder or sublet or grant any interest, privilege, or license whatsoever in connection with this Agreement.
14. **Restoration.** On or before the final expiration of this Agreement, as extended, or its termination by User, User shall vacate the Property, remove the property of User, and restore the Property to the Property's original condition or better, except with express written consent of County otherwise. If, however, this Agreement is revoked, User shall vacate the Property, remove the property of User therefrom, and restore the Property to the Property's original condition or better, within such time as County may designate. In either event, if User shall fail or neglect to remove said property and restore the Property, then, at the option of County, said property shall either become the property of County

without compensation therefor, or County may cause the property to be removed and no claim for damages against County or its officers or agents shall be created or made on account of such removal and restoration work.

15. **Fair Treatment.** User agrees that in the operation and use of the Property and any equipment, facilities or other improvements thereon, User will not, on the grounds of race, sex, color, religion, age, handicap, or national origin, discriminate or permit discrimination against any person or group of person in a manner prohibited by federal or state law or regulation. County is hereby granted the right to take such action as the federal or state government may direct to enforce such covenant of non-discrimination. This assurance is binding on User, its agents, successors, transferees, sub-lessees and assignees.
16. **Compliance.** User and all of User's agents, licensees, employees and invitees, including, without limitation, all vendors, shall comply with all rules, regulations, laws, codes, ordinances and directives of County, the State of South Carolina, the United States of America or any governmental entity (i.e.: OSHA, South Carolina Department of Health and Environmental Control, etc.) now in force or hereafter promulgated and including but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business, which would apply to User or the uses agreed to herein.
17. **Reasonable Care.** User shall exercise reasonable care in their conduct of all activities and toward all persons on the Property, and User shall conduct itself in a professional and commercially reasonable manner.
18. **Indemnification.** User agrees to release, indemnify and hold County and County's council members, officers, servants and employees harmless from and against any and all liabilities, damages, business interruptions, delays, losses, claims, judgments, of any kind whatsoever, including all costs, attorneys' fees, and expenses incidental thereto, which may be suffered by, or charged to, County or County's council members, officers, servants and employees by reason of any breach, violation or non-performance by User or its servants, employees or agents of any covenant or condition of this Agreement or by any act or failure to act of those persons, and will ensure that User is covered by adequate insurance to do so.
19. **Force Majeure.** Neither County nor User shall be liable for its failure to perform this Agreement or for any loss, injury, damage or delay of any nature whatsoever resulting therefrom caused by any Act of God, fire, flood, accident, strike, labor dispute, riot, insurrection, war or any other cause beyond County's or User's control.
20. **DISCLAIMER OF LIABILITY.** COUNTY HEREBY DISCLAIMS, AND USER HEREBY RELEASES COUNTY AND COUNTY'S COUNCIL MEMBERS, COMMISSION MEMBERS, OFFICERS, SERVANTS AND EMPLOYEES FROM, ANY AND ALL LIABILITY, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE) FOR ANY LOSS, DAMAGE OR INJURY OF ANY NATURE WHATSOEVER SUSTAINED BY USER OR USER'S EMPLOYEES, AGENTS, REPRESENTATIVES, OFFICERS, DIRECTORS, MEMBERS, PARTNERS, GUESTS, OR LICENSEES (THE "INJURED PARTIES") DURING THE TERM OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY LOSS DAMAGE OR INJURY CAUSED BY COUNTY'S EARLY TERMINATION OF THIS AGREEMENT, UNLESS SUCH LOSS, DAMAGE OR INJURY AROSE OUT OF THE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF COUNTY OR ITS SERVANTS, EMPLOYEES OR AGENTS. THE PARTIES HEREBY AGREE THAT UNDER NO CIRCUMSTANCES SHALL COUNTY BE LIABLE TO THE INJURED PARTIES FOR INDIRECT, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES, WHETHER IN CONTRACT OR TORT (INCLUDING STRICT LIABILITY AND NEGLIGENCE), SUCH AS, BUT NOT LIMITED TO, LOSS OF REVENUE OR ANTICIPATED PROFITS OR OTHER DAMAGE RELATED TO THE OPERATIONS OF USER.



21. **Survival.** All indemnification and release provisions under this Agreement shall survive the expiration or sooner termination of this Agreement.
22. **Default and Remedies.** In the event that User breaches any term or provision of this Agreement, and fails to remedy the same after thirty (30) days written notice, County may terminate this Agreement by giving written notice to User, provided, however, that County may not terminate this Agreement if the nature of User's breach is such that it cannot reasonably be cured within thirty (30) days and User is diligently pursuing a cure of such breach. In the event User files a petition in bankruptcy or receivership or makes a transfer or assignment for the benefit or creditors, then County may immediately terminate this Agreement, such termination to be effective immediately upon receipt of notice. In the event of the termination of this Agreement, privileges granted herein and obligations imposed herein shall terminate immediately and any and all rights of User to any fees or charges to third parties, including but not limited to concessionaires and vendors, shall immediately accrue to County. Upon termination of this Agreement, County will have the right to remove or store any property or other trade fixture not a part of the Property and belonging to User without any liability therefor. User further agrees to pay all of County's expenses, including attorney's fees and costs, in enforcing any of the obligations of this Agreement, or in any proceedings or litigation in which County shall become involved without County's fault, by reason of this Agreement.

23. **Conflict Resolution.**

A. Any conflict, dispute or grievance (collectively, "Conflict") by User must first be submitted in writing to the Oconee County Administrator for negotiation and resolution.

B. In the event that the Conflict is not resolved by the Oconee County Administrator or his designee within fifteen (15) business days, the parties shall endeavor to resolve their claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Commercial Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Walhalla, South Carolina, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

24. **Notices.** Any notice given by one party to the other in connection with this Agreement shall be in writing and hand-delivered or sent by certified or registered mail, return receipt requested:

If to County, addressed to:

If to User, addressed to:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Notices shall be deemed to have been received on the date of hand-delivery to User's officer, director, partner or member or upon receipt as shown on the return receipt if sent by certified mail or one day after being sent by overnight courier. Changes in either party's notice address shall be effective if given in the manner set forth above.

25. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of South Carolina.
26. **Non-appropriation.** This Agreement is subject to the appropriation of funds by Oconee County Council. In the event of a non-appropriation of funds by Oconee County Council that may affect County's performance of any act required by this Agreement, this Agreement will be deemed terminated thirty (30) days following such non-appropriation and written notice thereof.

27. **Relationship of Parties.** The relationship between County and User shall always and only be that of parties dealing at arms length and not as partner or joint venturer. User shall never at any time during the term of this Agreement become the agent of County, and County shall not be responsible for the acts or omissions of User, its employees, or agents. All employees hired by User are employees of User and not of County. User shall compensate, supervise and discharge said employees. User is responsible to County for any damage caused by an employee or agent of User.
28. **Remedies Cumulative.** The rights and remedies with respect to any of the terms and conditions of this Agreement shall be cumulative and not exclusive, and shall be in addition to all other rights and remedies available to either party in law or equity.
29. **Waiver.** The waiver by either party of any covenant or condition of this Agreement shall not thereafter preclude such party from demanding performance in accordance with the terms hereof.
30. **Successors Bound.** This Agreement shall be binding on and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the Parties.
31. **Severability.** If a provision hereof shall be finally declared void or illegal by any court or agency having jurisdiction over the parties to this Agreement, the entire Agreement shall not be void, but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties; provided, however, if the rights of User have been materially reduced, or any economic burdens upon User or County have been materially increased by the removal of such provision, then the burdened party shall have the right to terminate this Agreement within ten (10) business days of the passage of the final period of appeal of such result.
32. **Entire Agreement.** This Agreement contains the entire agreement between the parties and may be modified only by an agreement in writing signed by the Parties.
33. **Captions.** Captions in this Agreement are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or any of the terms of the Agreement.
34. **Time of Essence.** Time is of the essence of this Agreement.
35. **Counterparts.** This Agreement may be executed in one or more counterparts and as so executed shall constitute a single instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**COUNTY:**

OCONEE COUNTY

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**USER:**

SOUTH CAROLINA FOOTHILLS HERITAGE FAIR

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## EXHIBIT "A"

### Description of Property

All that certain piece, parcel or tract of land lying and being situate in the State of South Carolina, County of Oconee, Center Township, being known and designated as Tracts 2, 3, and 4, containing approximately 330 acres, more or less, as shown and more fully described on a plat thereof by James G. Hart, Register and Land Surveyor, dated 3/13/89, recorded of even date herein in Plat Book A-45, Page 6, records of the Clerk of Court of Oconee County, South Carolina, and

All that certain piece, parcel or tract of land lying and being situated in the State of South Carolina, County of Oconee, Center Township, being known and designated as Tract 5, containing 66.746 acres, more or less, and is more fully described on a plat thereof prepared by James G. Hart, RSL, dated May 5, 2005 and recorded on August 2, 2005, in Plat Book B-78, at Page 10, records of Oconee County, South Carolina.

EXHIBIT "B"

Concept Plan





**AGENDA ITEM SUMMARY  
OCONEE COUNTY, SC**

**COUNCIL MEETING DATE: May 4, 2010  
COUNCIL MEETING TIME: 7:00 PM**

**ITEM TITLE OR DESCRIPTION:**

**Third and Final Reading:** ORDINANCE 2010-02 – "AN ORDINANCE AMENDING CHAPTER 2, ARTICLE V OF THE OCONEE COUNTY CODE OF ORDINANCES PERTAINING TO THE PROCUREMENT POLICIES AND PROCEDURES OF OCONEE COUNTY; AND OTHER MATTERS RELATED THERETO".

**BACKGROUND OR HISTORY:**

The original Procurement Ordinance 85-2 was updated by Ordinance 2001-15 on December 4, 2001. Since that time there has only been one amendment ordinance 2002-12 which included only two changes. At this time, an updated Procurement Ordinance is submitted for approval. This new Ordinance follows a new format and addresses many issues that are standard in other South Carolina County Ordinances.

**SPECIAL CONSIDERATIONS OR CONCERNS:**

Ordinance will need three readings and a public hearing to be approved.

**COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:**

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes / No -- Not Applicable.

**STAFF RECOMMENDATION:**

Staff recommends approval of Ordinance 2010-02 as amended without a local vendor preference which treats all vendors fairly and equally. If County Council desires to include a local vendor preference, then staff suggests the following wording be added to the amended Ordinance 2010-02:

The lowest local responsible and responsive bidder who is within two percent (2%) of the lowest non-local responsible and responsive bidder, may match the bid submitted by the non-local responsible and responsive bidder and thereby be awarded the contract. The local preference as set forth in this section shall only be applied to responses to solicitations of written quotes and invitations to bid in excess of ten thousand dollars (\$10,000.00). The local preference as set forth in this section shall only be given to local responsible and responsive bidders who have a physical business address located and operating within Oconee County and who have met all other requirements of the solicitations of written quotes or the invitation to bid, including, without limitation, payment of all duly assessed state and local taxes. If state or federal guidelines prohibit or otherwise limit local preference, then the County shall not use local preference in awarding the contract. If there are multiple responsible and responsive bidders who meet the local preference guidelines as set forth in this section, the County shall use standard procurement practice and procedure as set forth in this Article to determine the priority of selection.

The local preference as set forth in this section does not waive or otherwise abrogate the County's unqualified right to reject any and all bids or proposals or accept such bids or proposals, as appears in the County's own best interest.

**FINANCIAL IMPACT:**

None.

*Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.*

*A calendar with due dates marked may be obtained from the Clerk to Council.*



**ATTACHMENTS**

1. Ordinance 2010-02 and Amended Exhibit A

**Reviewed By/ Initials:**

\_\_\_\_\_ County Attorney      \_\_\_\_\_ Finance      \_\_\_\_\_ Grants      \_\_\_\_\_ Procurement

**Submitted or Prepared By:**

  
Department Head/Elected Official

**Approved for Submittal to Council:**

  
Gene Klugh, Interim County Administrator

*Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.*

*A calendar with due dates marked may be obtained from the Clerk to Council.*





STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE  
**ORDINANCE 2010-02**

**AN ORDINANCE AMENDING CHAPTER 2, ARTICLE V OF THE OCONEE  
COUNTY CODE OF ORDINANCES PERTAINING TO THE PROCUREMENT  
POLICIES AND PROCEDURES OF OCONEE COUNTY; AND OTHER  
MATTERS RELATED THERETO**

**WHEREAS**, Oconee County, South Carolina (the "County"), a body politic and corporate and a political subdivision of the State of South Carolina, acting by and through the Oconee County Council (the "County Council"), has previously adopted certain ordinances and regulations regarding procurement, all of which are codified in Chapter 2, Article V of the Code of Ordinances, Oconee County, South Carolina (the "Code of Ordinances"); and,

**WHEREAS**, the South Carolina General Assembly has delegated the responsibility to political subdivisions of South Carolina, including the County, to adopt ordinances and promulgate procedures embodying sound principles of appropriately competitive procurement; and,

**WHEREAS**, the County Council recognizes that the primary concern of county government is the effective provision of services to the citizens of the County in a competitive, efficient and economical way; and,

**WHEREAS**, the County Council intends for all purchases of goods and services needed to provide these governmental services in the County be conducted with primary concern for the efficient and economical use of revenues provided by the citizens of the County; and,

**WHEREAS**, the County Council desires to update, amend and revise the centralized procurement practices and processes of the County, to provide a clear and comprehensive ordinance governing procurement by this County; to promote increased public confidence in the procurement regulations, procedures, and practices used by this County; to maximize the purchasing value of public funds; to foster real and effective broad-based competition for public procurement within the free enterprise system; to provide safeguards for maintaining a procurement system of quality and integrity; and to permit the continued development of procurement regulations, procedures, and practices that support user needs.

**WHEREAS**, the County Council therefore intends to repeal and replace all sections in Chapter 2, Article V of the Code of Ordinances;

**NOW, THEREFORE**, be it ordained by County Council, in meeting duly assembled that:

1. Chapter 2, Article V of the Code of Ordinances, Oconee County, South Carolina, entitled *Finance*, is hereby repealed in its entirety, is renamed *Procurement*, and is replaced as set forth in **Exhibit A**, which is attached hereto and hereby incorporated by reference as fully as if set forth verbatim herein.
2. All sections and divisions of Chapter 2, Article V of the Code of Ordinances that are not specifically replaced by and through Exhibit A are hereby repealed, revoked, and rescinded.
3. The remaining terms and provisions of the Code of Ordinances not revised or affected hereby remain in full force and effect.
4. Should any word, phrase clause or provision of this Ordinance be declared invalid or unconstitutional by a court of competent jurisdiction, such determination shall not effect this Ordinance as a whole, or any part hereof, except that specific provision declared by such court to be invalid or unconstitutional. If any part of this Ordinance is declared invalid, the remainder of the Ordinance shall not be affected and shall remain in force.
5. This Ordinance shall take effect and be in full force and effect from and after third reading and enactment by County Council.

ORDAINED in meeting, duly assembled, this \_\_\_\_ day of \_\_\_\_\_, 2010.

**OCONEE COUNTY, SOUTH CAROLINA**

By: \_\_\_\_\_  
Reginald T. Dexter, Chairman, County Council  
Oconee County, South Carolina

ATTEST:

By: \_\_\_\_\_  
Elizabeth G. Hulse, Clerk to County Council  
Oconee County, South Carolina

First Reading [in title only]: January 19, 2010  
Second Reading: April 6, 2010  
Public Hearing: April 20, 2010  
Third Reading: May 4, 2010

ORDINANCE 2010-02  
Exhibit A

**ARTICLE V. PROCUREMENT.**

**SECTION 2-421. Application.**

(a) **General Application.** This Article applies to contracts for the procurement of property, supplies, services, and construction entered into by the County after the effective date of Oconee County Ordinance 2010-02, unless the parties agree to its application to contracts entered into prior to the effective date.

(b) **Application to County Procurement.** This Article shall apply to every expenditure of funds by the County for the purpose of procuring property, supplies, services, and construction services for the County irrespective of the source of funds. It shall also apply to the disposal of County equipment and supplies.

(c) **Application to State or Federal Fund Procurements.** Where a procurement involves funds provided by the State of South Carolina or the United States of America, that procurement shall be in compliance with such State or Federal laws and authorized regulations as are mandatorily applicable. However, in every instance where the provisions of this Article are more restrictive than State or Federal laws or authorized regulations, the provisions of this Article shall be followed.

**SECTION 2-422. Definitions.**

**Architect-Engineer and Land Surveying Services.** Those professional services associated with the practice of architecture, professional engineering, land surveying, landscape architecture and interior design pertaining to construction, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform, including but not limited to studies, investigations, surveys, evaluations, consultations, planning, programming conceptual designs, plans and specifications, cost estimates, inspections, shop drawing reviews, sample recommendations, preparation of operating and maintenance manuals and other related services.

**Bidder.** A business who has submitted a bid in response to an invitation for bids.

**Business.** Any corporation, partnership, sole proprietorship, firm, enterprise, company, franchise, association, organization, self-employed individual, or any other private legal entity.

**Change Order.** An agreed-upon written order to a Contractor executed by the Procurement Director and the Contractor after or in conjunction with execution of the base contract, directing a change in the work which may include a change in the contract price, the time for the Contractor's performance, or any combination thereof.

**Construction.** The process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings or real property.

**Construction Management Services, Design-Build Services, or Turnkey Management Services.** Approaches to construction contract management that allow for the selection of a single business to perform and manage the complete design and construction of a project.

**Contract.** All types of County agreements, regardless of how they may be styled, for the procurement or disposal of property, supplies, services, or construction.

**Contract Modification.** Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

**Contractor.** Any business having a contract with the County.

**Cooperative Procurement.** Procurement conducted by, or on behalf of, more than one Public Procurement Unit.

**Cost Reimbursement Contract** (also known as a Cost Plus-a-Percentage Contract) A contract that reimburses the contractor for all incurred costs which are allowable and allocable under the terms of the contract and may include a profit or fee.

ORDINANCE 2010-02

Exhibit A

**Days.** Calendar days. In computing any period of time prescribed by this Article or the ensuing regulations, or by any order or determination of the Procurement Director or of the Procurement Appeals Board, the day of the event from which the designated period of time begins to run is not included. If the final day of the designated period falls on a Saturday, Sunday, or a legal holiday for the County, then the period shall run to the end of the next business day.

**Duly Certified Disadvantaged Business Enterprises (DBE), Small Business Enterprises (SBE), Minority Business Enterprises (MBE), and Women's Business Enterprises (WBE)** are businesses which have obtained a certification as a DBE, SBE, MBE or WBE from the State or Federal Government, including, but not limited to certification as an MBE by the Governor's Office of Small and Minority Business Assistance.

**Excess Supplies.** Any supplies which are no longer required by the using County department in possession of the supplies or which no longer have a remaining useful life.

**Expendable Supplies.** Supplies or equipment that are normally consumed during use and have a very short life cycle.

**Governmental Body.** Oconee County or any department or agency of this County with which a public official or public employee is associated or employed.

**Invitation to Bid.** A written or published solicitation issued by the Procurement Director for bids to contract for the procurement or disposal of stated property, supplies, services, or construction, which will ordinarily result in the award of the contract to the responsible bidder making the lowest responsive bid.

**Nonexpendable Supplies.** Supplies that are not consumed during use or that do not lose their identity during use.

**Offeror.** A business who has submitted an offer in response to a request for proposals.

**Person.** One human being acting individually or on behalf of a business, an estate, a committee, an association, a club, or any other organization or group of persons acting in concert.

**Personal Property.** All supplies not considered as real property.

**Professional services.** Those services which involve extended analysis, the exercise of discretion and independent judgment in their performance, and an advanced, specialized type of knowledge, expertise, or training customarily acquired either by a prolonged course of study or equivalent experience in the field, including, without limitation, accountants, paralegals, architects, clergy, surveyors, consultants, court reporters, dentists, physicians, and nurses.

**Procurement.** The buying, renting, leasing, or otherwise acquiring of any property, supplies, services, or construction services. It also includes all functions that pertain to the obtaining of any property, supply, service, or construction, including description of requirements, selection, and solicitation of sources, preparation and award of contracts, and all phases of contract administration.

**Public Agency.** A public entity subject to or created by the County.

**Public Procurement Unit.** Any county, city, town, or other subdivision of the State or public agencies of any such subdivision, public authority, educational, health, or other institution, any other entity which expends public funds for procurement of property, supplies, services, or construction, any association which limits membership to governmental units.

**Procurement Director.** The head of the Central Procurement Department of the County.

**Real Property.** Any land, all things growing on or attached thereto, and all improvements made thereto including buildings and structures located thereon.

**Request for Proposals.** A written or published solicitation issued by the County for proposals to provide property, supplies, services, or construction services which ordinarily result in the award of the contract to the responsible bidder making the proposal determined to be most advantageous to the County. The award of the contract must be made on the basis of evaluation factors which must be stated in the Request for Proposals, and may include, but not be controlled alone by, the factor of price proposed to be charged.



ORDINANCE 2010-02  
Exhibit A

**Responsible Bidder or Offeror.** A business who has the capability in all respects to perform fully the contract requirements, and the tenacity, perseverance, experience, integrity, reliability, capacity, facilities, equipment, and credit which will assure good faith performance.

**Responsive Bidder or Offeror.** A business who has submitted a bid or offer which conforms in all material respects to the requirements set forth in the invitation for bids or request for proposals.

**Service(s).** The furnishing of labor, time, or effort by a contractor not required to deliver specific end product, other than reports which are merely incidental to required performance. This term does not include employment agreements.

**Subcontractor.** Any business having a contract to perform work or render service to a prime contractor as a part of the prime contractor's agreement with the County.

**Specification.** Any description of the physical or functional characteristics of a property, supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a property, supply, service, or construction item for delivery.

**Supplies.** All personal property, including but not limited to equipment, materials, printing, insurance, excluding real property or an interest in real property.

**Surplus Supplies or Property.** Any supplies or property that are no longer needed by the County and are designated for disposal outside of the County. This includes obsolete supplies and/or property, scrap materials, and nonexpendable supplies that have completed their useful life cycle. (See Section 2-445)

**Using Department.** Any department, commission, board, or public agency of this County requiring supplies, services, or construction procured under this Article.

**SECTION 2-423. Procurement Organization.**

(a) **Centralization of Procurement.** All rights, powers, duties, and authority relating to the purchase of equipment, supplies, and services and to the management, control, warehousing, sale, and disposal of property, equipment and surplus supplies are hereby vested in a central Procurement Department for the County subject to the legitimate authority of the County Council, the County Administrator and such ordinances, rules, and regulations as exist for the governance of the County.

(b) **Centralization of Procurement Authority.** Except as otherwise provided in this Article, the authority relating to the procurement of property, supplies, services, and construction is hereby vested in the Procurement Director of this County.

(c) **Establishment, Appointment, and Tenure.** There is hereby created the position of Procurement Director, who shall be the County's principal public procurement official. The County Administrator shall appoint the Procurement Director. The Procurement Director shall be employed with regard to his/her professional qualifications in public procurement and level of education. The Procurement Director shall be a full-time public employee of the County, and subject to the Oconee County Personnel Rules.

(d) **Authority and Duties.** Except as otherwise provided herein, the Procurement Director shall serve as the principal public procurement official of the County, and shall be responsible for the procurement of supplies, services, and construction in accordance with this Article, as well as the disposal of Surplus Supplies and Property. In accordance with this Article, the Procurement Director shall: (a) procure or supervise the procurement of all property, supplies, services, and construction services needed by the County; (b) sell, trade, or otherwise dispose of Surplus Supplies and Property belonging to the County; (c) establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the using department, for property, supplies, services, and/or construction services.

(e) **Delegation of Authority.** The Procurement Director may delegate authority to purchase certain property, supplies, services, and construction to other County officials or designees of the Procurement Department, if such delegation is deemed necessary for the effective procurement of those items, but only in accordance with the other terms and provisions of this Article.



ORDINANCE 2010-02

Exhibit A

(f) **Authority to Promulgate Regulations.** Except as otherwise provided in this Article, the Procurement Director shall have the authority and responsibility to promulgate regulations governing the procurement, management, control, and disposal of any and all property, supplies, services, and/or construction to be procured by the County. A manual of Procurement Regulations and Procedures shall be developed and maintained by the Procurement Director. All regulations and procedures shall be in keeping with the letter and intent of this Article.

(g) **Relationship With Using Departments.** The Procurement Director and his/her staff shall maintain a close and cooperative relationship with the using departments. Each using department shall be afforded reasonable opportunity to participate in and make recommendations with respect to procurement matters affecting the using department.

(h) **Advisory Groups.** The Procurement Director may appoint advisory groups to assist with respect to specifications and procurement in specific areas, and with respect to any other matters within the authority of the Procurement Director. These groups could include department heads, vendors, and others as deemed necessary. Such groups shall, to the extent required by law, comply with all South Carolina laws applicable to such groups.

**SECTION 2-424. Procurement Records.**

(a) **Retention of Procurement Records.** All determinations and other written records pertaining to the solicitation and award of an Invitation to Bid, a Request for Proposals, or any other solicitation made under this Article, and findings required by this Article shall be maintained in a file by the Procurement Director. This requirement does not include documents, parts of documents, or copies of documents that are normally distributed to using departments, the Finance Department, or any other department that normally receives such distributions. All procurement records shall be retained and disposed of in accordance with records retention guidelines and schedules approved by the County. If a contract is being funded in whole or in part by assistance from a Federal agency, then all procurement records pertaining to that contract shall be maintained for three (3) years from the closeout date of the assistance agreement, or the final disposition of any controversy arising out of the assistance agreement.

(b) **Public Access to Procurement Information.** Procurement information shall be a public record to the extent required by the South Carolina Freedom Of Information Act ("SCFOIA") as set forth in Chapter 4 of Title 30, of the South Carolina Code of Laws, 1976, as amended. Except as required by law or court order, commercial or financial information which an offeror or bidder seeks to protect from disclosure (hereinafter "Proprietary Information" in this subsection) will not be disclosed after the award provided the offeror or bidder clearly marks any information the offeror or bidder considers to contain Proprietary Information as "CONFIDENTIAL" on each part of the proposal documents by page, paragraph, section or line, as appropriate. Proprietary Information includes information that, if disclosed, might cause harm to the competitive position of the offeror or bidder supplying the information. Additionally, the offeror or bidder seeking to exempt information from disclosure under SCFOIA shall be solely responsible for identifying information as exempt from disclosure under SCFOIA and for visibly marking each specific document or part of a document which the offeror or bidder deems to be so exempt as "EXEMPT FROM S.C. FREEDOM OF INFORMATION ACT." If any part of a proposal is designated as exempt from SCFOIA, there must be attached to that part an explanation of how this information fits within one or more categories exempt from disclosure under SCFOIA. The County shall reserve the right to determine, in its sole discretion, whether this information, including marked items, meets SCFOIA requirements for non-disclosure or otherwise should be exempt from disclosure. The offeror or bidder shall be solely responsible for any consequences related to or arising from the nondisclosure of any information that is subsequently determined not exempt from disclosure under SCFOIA. The County will not assume responsibility for the disclosure of any information that is disclosed as a result of the offeror or bidder's failure to visibly mark as "CONFIDENTIAL" or "EXEMPT FROM S.C. FREEDOM OF INFORMATION ACT," and the County will not bear liability for disclosing Proprietary Information or other information that the County in good faith has determined to be subject to disclosure under applicable law or court order. The County shall disclaim any responsibility for not disclosing information identified by an offeror or bidder as exempt from SCFOIA.

ORDINANCE 2010-02  
Exhibit A

**SECTION 2-425. DBE/SBE/MBE/WBE Utilization**

The County wishes to ensure that qualified and duly certified Disadvantaged Business Enterprises ("DBE"), Small Business Enterprises ("SBE"), Minority Business Enterprises ("MBE"), and Women's Business Enterprises ("WBE") are afforded the opportunity to fully participate in the overall procurement process of the County. In addition to any requirements set forth in state or federal mandates, the Procurement Director may include qualified DBE's, SBE's, MBE's, and WBE's on solicitation lists.

**SECTION 2-426. Specific State and Federal Law Requirements.**

(a) **Drug-free Workplace Act.** The County shall require offerors and bidders responding to any written or published solicitation issued by the County to certify in writing that the offeror or bidder is in full compliance with the requirements of the Drug-free Workplace Act as set forth in Chapter 107 of Title 44 of the South Carolina Code of Laws, 1976, as amended.

(b) **Unauthorized Aliens and Public Employment.** The County shall require offerors and bidders responding to any written or published solicitation issued by the County to certify in writing that the offeror or bidder is in full compliance with the requirements set forth in Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended, and specifically that the offeror or bidder agrees to provide to the public employer any documentation required to establish either: (a) Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended, is inapplicable to the offeror or bidder or any subcontractor or sub-subcontractor of the offeror or bidder; or (b) the offeror or bidder and any subcontractor or sub-subcontractor of the offeror or bidder is in full compliance with Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended. The offeror or bidder shall also certify that the offeror or bidder will, and at all times during the performance of work provided to the County, be in full compliance with the provisions of the Immigration Reform and Control Act of 1986 (IRCA) in the hiring of its employees, and the offeror or bidder shall indemnify, hold harmless and defend the County against any and all actions, proceedings, penalties or claims arising out of the offeror or bidder's failure to comply strictly with IRCA or Chapter 14 of Title 8 of the South Carolina Code of Laws, 1976, as amended.

(c) **Compliance with Federal Requirements; Compliance with Disbursement and Management Requirements of Financing Documents.** Where a procurement involves the expenditure of Federal assistance or contract funds, the Procurement Director shall comply with such Federal law and authorized regulations which are mandatorily applicable, and which are not presently reflected in this Article. Where a procurement involves the expenditure of funds, which are the proceeds of bonds or certificates of participation, or other financing instruments or documents, the Procurement Director and other applicable County personnel shall comply with the terms of such financing as they relate to the disbursement of funds and management of projects, insofar as such terms are mandatorily applicable and which are not presently reflected in this Article.

**SECTION 2-427. Standards of Conduct and Ethics in Public Contracting.**

In all actions involving the procurement of property, supplies, services, or construction for the County, the provisions of Chapter 13 of Title 8 of the South Carolina Code of Laws, 1976, as amended, (the "State Ethics Act"), shall be complied with. It shall be unethical for a person or business to be retained, or to retain a person or business, to solicit or secure a County contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

**SECTION 2-428. Exemptions.**

(a) **Governmental Body and Funding Exemptions.** Contracts approved by ordinance, resolution, or other specific action of the County Council are exempt from the provisions of this Article. County Council may exempt by resolution specific items, services, or projects from the purchasing procedures required in this Article, and County Council shall retain the authority to establish by ordinance, or approve by resolution, a method of source selection other than those specified in this Article. The purchase and disposal of published books, periodicals, technical pamphlets, and other such materials by the Oconee County Public Library System are exempt from the provisions of this Article. However, the Oconee County Public Library Board of Trustees shall submit procedures

for the purchase and disposal of such items to County Council for approval and shall abide by the procedures approved by County Council. If the County lawfully provides funds for the provision of public services, public improvements or public infrastructure in connection with a private project, where the work for the project, including without limitation, the design, acquisition, construction or installation of improvements or infrastructure (including the public improvements or infrastructure) is to be performed by a private business or its agent, such a project shall be exempt from this Article and the private business need not procure the services and the supplies associated with such a project as specified in this Article.

(b) **Supply/Service Exemptions.** The following supplies and services are exempt from this Article and need not be purchased through the standard procurement process: (1) Works of art and one-of-a-kind items, such as paintings, antiques, sculptures and similar objects; (2) Published books, maps, periodicals, technical pamphlets, and other such materials; (3) Membership fees, professional dues, registration fees; (4) Postage stamps and fees; (5) Utility Services; (6) Advertising time or space in newspapers, radio, television, professional journals or publications; (7) Professional training; (8) The purchase of goods, products, and services from the South Carolina Department of Corrections, Division of Prison Industries; (9) Attorneys and legal services; (10) License agreements for computer software, after such software has been purchased subject to the provisions of this Article; (11) The procurement of copyrighted educational films, filmstrips, slides and transparencies, CD-ROM documents, databases, computer assisted instructional materials, video programs and other related materials.

(c) **Other Exemptions.** Procurements obtained under any of the following methods are exempt from Invitation to Bid/Request for Proposals procedures listed in this Article: (1) Sole Source procurement (see Section 2-434); (2) Emergency procurements (see Section 2-435); (3) Equipment Maintenance or service contracts which are made with the manufacturer or authorized service/agent. This also includes additional purchases of equipment to replace or upgrade part of a system that is covered under a maintenance agreement; (4) Repairs to equipment performed by an authorized dealer including repair parts that may only be obtained from an authorized dealer; (5) Equipment or services purchased through South Carolina State Contracts, South Carolina State or Federal Surplus Property or from Invitations to Bid/Requests for Proposals issued by other governmental agencies or political subdivisions and other cooperative purchases under Section 2-444; (6) Used Equipment – When County staff have inspected used equipment and found it to be in good condition and competitively/fairly priced and when “time is of the essence” to secure said equipment, the Procurement Director or the County Administrator have authority to approve this type of purchase; and (7) Existing bid or contract – the acquisition of supplies, services or construction previously contracted for. Although the items listed in this section are exempt from the normal procurement procedures of this Article, every effort should be made to ensure that the procurement made and/or contract negotiated is cost effective and is in the best interest of the County.

#### **SECTION 2-429. Methods of Source Selection.**

Unless otherwise required by law, all County contracts amounting to Fifty Thousand Dollars (\$50,000.00) or more shall be awarded by competitive sealed bidding, pursuant to Section 2-430 (Competitive Sealed Bidding), except as provided in: (1) Section 2-428(b) (Supply Service Exemptions); (2) Section 2-428(c) (Other Exemptions); (3) Section 3-430(m) (Negotiations After Unsuccessful Competitive Sealed Bidding); (4) Section 2-431 (Competitive Sealed Proposals); (5) Section 2-432 (Purchasing Limits); (6) Section 2-434 (Sole Source Procurement); (7) Section 2-435 (Emergency Procurements); (8) Section 2-446 (Real Property); (9) Section 2-436 (Professional Services); (10) Section 2-442 (Construction Contracting). County Council shall retain the authority to establish or approve a method of source selection other than those specified in this Section.

#### **SECTION 2-430. Competitive Sealed Bidding.**

(a) **Conditions for Use.** Contracts amounting to Fifty Thousand Dollars (\$50,000.00) or more shall be awarded by competitive sealed bidding except as otherwise provided in Section 2-429 (Methods of Source Selection).

(b) **Invitation to Bid.** An Invitation to Bid shall be issued in an efficient and economical manner to at least three qualified sources on the bidders' lists appropriate for the particular procurement, and shall include specifications and all contractual terms and conditions applicable to the procurement. If three qualified sources are not available, invitations to bid shall be issued to such qualified sources as are available.



ORDINANCE 2010-02  
Exhibit A

(c) **Bidders' Lists.**

i. All sources requesting to be put on a bidders' list shall be so enlisted, unless the Procurement Director makes a written determination that the source should not be enlisted in accordance with regulations.

ii. The Procurement Director shall ensure that the bidders' lists contain all identified sources interested in bidding on County procurement. The Procurement Director shall periodically review the bidders' lists and shall require the addition or deletion to such lists of sources contained therein, as deemed necessary.

(d) **Public Notice.** Adequate public notice of the Invitation to Bid shall be given for a reasonable time, not less than seven calendar days prior to the date set forth therein for the opening of bids. Such notice may include publication in print or electronic media a reasonable time prior to bid opening. The public notice shall state the place, date, and time of bid opening.

(e) **Receipt and Safeguarding of Bids.** All bids (including modifications) received prior to the time of opening shall be kept secure and unopened in a locked cabinet or safe.

(f) **Bid Opening.** Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The amount of each bid, and such other relevant information as the Procurement Director deems appropriate, together with the name of each bidder shall be recorded. Late bids shall not be opened and considered for award, but the name of the late Bidder(s) and the time of the attempted delivery shall be recorded in the bid file, wherever possible. The record (tabulation) and each bid shall be open to public inspection after award of bid in accordance with Section 2-424. The Procurement Director may record the bid opening.

(g) **Bid Acceptance and Bid Evaluation.** Bids shall be unconditionally accepted without alteration or correction, except as authorized by this Article. Bids shall be evaluated based on the requirements set forth in the Invitation to Bid, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. The Invitations to Bid shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the Invitation to Bid.

(h) **Discussion with Bidders.** As provided in the Invitation to Bid, discussions may be conducted with apparent responsive bidders for the purpose of clarification if in the Procurement Director's sole judgment such clarification is necessary and beneficial to the County. Clarification of any bidder's bid must be documented in writing by the Procurement Director and shall be included with the bid file.

(i) **Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids before or after bid opening, or cancellation of awards or contracts based on such mistakes, may be permitted subject to the following: appropriate mistakes discovered by the bidder before bid opening may be modified or withdrawn by submitting written notice to the Procurement Department prior to the time set for bid opening. After bid opening, no changes in bid prices or other provisions of bids prejudicial to the interest of the County shall be permitted. Except as otherwise provided by regulation, all decisions to permit the correction or withdrawal of bids, or to cancel awards, or contracts, after award but prior to performance shall be supported by a written determination made by the Procurement Director.

(j) **Tie Bids.** If two or more bidders are tied in price, while otherwise meeting all of the required terms and conditions of the bid, awards may be determined as follows:

i. If there is an in-county business (active business or warehousing facility located within Oconee County) tied with an out-of-county business, the award will go to the in-county business.

ii. If there is an in-state business (active business or warehousing facility located within South Carolina) tied with an out-of-state business, the award will go to the in-state business.

iii. Tie bids involving in-County and in-State firms may be resolved by the flip of a coin in the office of the Procurement Director witnessed by all interested parties.

(k) **Award.** The contract shall be awarded with reasonable promptness by appropriate written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation to Bid. The Procurement Director shall approve the award of contracts up to Twenty Five Thousand Dollars (\$25,000.00) after receiving an acceptable recommendation of award from the using department. The County Administrator shall approve the award of contracts over Twenty Five Thousand Dollars (\$25,000.00), but less

ORDINANCE 2010-02

Exhibit A

than Fifty Thousand Dollars (\$50,000.00) after receiving an acceptable recommendation of award from the Procurement Director or using department. Awards of contracts over Fifty Thousand Dollars (\$50,000.00) shall be approved by resolution of County Council.

(l) **Minor Informalities and Irregularities in Bids.** A minor informality or irregularity is one which is merely a form or is some immaterial variation from the exact requirements of the Invitation to Bid having no effect or merely a trivial or negligible effect on total bid price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to, bidders. The Procurement Director shall either give the bidder the opportunity to cure any deficiency resulting from a minor informality or irregularity in a bid or waive any such deficiency when it is to the advantage of the County. Such communication or determination shall be in writing. Examples of minor informalities or irregularities may, in the County's sole discretion, include, but are not limited to:

- i. failure of a bidder to return the number of copies of signed bids required by the solicitation;
- ii. failure of a bidder to furnish the required information concerning the number of the bidder's employees or failure to make a representation concerning its size;
- iii. failure of a bidder to acknowledge receipt of an amendment to a solicitation, when required, but only if the amendment has no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or relative standing of bidders;
- iv. failure of a bidder to furnish product literature;
- v. failure of a bidder to furnish financial statements;
- vi. failure of a bidder to indicate a bid number on its submission envelope;
- vii. failure of a bidder to indicate his/her contractor's license number.

(m) **Negotiations After Unsuccessful Competitive Sealed Bidding.** When bids received pursuant to an Invitation to Bid are unreasonable or the low bid exceeds available funds as certified by the Finance Director, and it is determined in writing by the Procurement Director that time or other circumstances will not permit the delay required to re-solicit competitive sealed bids, a contract may be negotiated pursuant to this section, provided that: (1) each responsive/responsible bidder, who submitted a bid under the original solicitation, is notified of the determination and is given reasonable opportunity to negotiate; (2) the negotiated price is lower than the lowest rejected bid by any responsive/responsible bidder under the original solicitation; (3) the negotiated price is the lowest negotiated price offered by any responsive/responsible bidder.

(n) **Cost of Bids.** Under no circumstances will the County be liable for any costs associated with any response to solicitations made under this Article. The bidder shall bear all costs associated with the preparation of responses to solicitations made under this Article.

(o) **Rejection or Acceptance of Bids; Waiver of Technicalities and Irregularities.** The County shall reserve the unqualified right to reject any and all bids or accept such bids, as appears in the County's own best interest. The County shall reserve the unqualified right to waive technicalities or irregularities of any kind in solicitations made under this Article. In all cases, the County shall be the sole judge as to whether a bidder's bid has or has not satisfactorily met the requirements to solicitations made under this Article.

**SECTION 2-431. Competitive Sealed Proposals / Request for Proposals.**

(a) **Conditions for Use.** When the Procurement Director determines, in writing, with explanation of the reason(s), that the use of competitive sealed bidding is either not practicable or not advantageous to the County, a contract may be entered into by use of the competitive sealed proposals method.

(b) **Request for Proposals.** Proposals shall be solicited from at least three qualified sources, when such sources are available, through a Request for Proposals.

(c) **Public Notice.** Adequate public notice of the Request for Proposals shall be given in the same manner as provided in Section 2-430(d) (Competitive Sealed Bidding, Public Notice); provided the minimum notice period shall be fifteen (15) calendar days.



ORDINANCE 2010-02  
Exhibit A

(d) **Receipt of Proposals.** No proposals shall be handled so as to permit disclosure of the contents of any proposal to competing offerors during the process of negotiation. A register of proposals shall be prepared containing the name of the offeror, the number of modifications received, if any, and a description sufficient to identify the item/service offered. The register of proposals shall be open for public inspection only after contract award.

(e) **Proposal Opening.** Proposals shall be publicly opened and only the names of the offerors disclosed at the proposal opening. Contents of competing proposals shall not be disclosed during the process of negotiation. Proposals shall be open for public inspection, in accordance with Section 2-424, after contract award. Late proposals shall neither be opened nor considered for award; however, the name and address of the late offeror and the time of attempted delivery shall be recorded wherever practicable.

(f) **Request for Qualifications.** Prior to soliciting proposals, the Procurement Director may issue a Request for Qualifications from prospective offerors. Such request shall contain at a minimum a description of goods or services to be solicited by the Request for Proposals and the general scope of the work and shall state the deadline for submission of information and how prospective offerors may apply for consideration. The request shall require information only on their qualifications, experience, and ability to perform the requirements of the contract. After receipt of the responses to the Request for Qualifications from prospective offerors, the prospective offerors shall be ranked from most qualified to least qualified on the basis of the information provided. Proposals shall then be solicited from at least the top three prospective offerors by means of a Request for Proposals. The failure of a prospective offeror to be selected to receive the Request for Proposals shall not be grounds for protest under Section 2-443.

(g) **Public Notice.** Adequate public notice of the Request for Qualifications shall be given in the manner provided in Section 2-430(d).

(h) **Evaluation Criteria.** The Request for Proposals shall state the criteria to be considered in evaluating proposals. Price may, but need not be, an initial evaluation criteria.

(i) **Discussion with Responsive/Responsible Offerors and Revisions to Proposals.** As provided in the Request for Proposals, discussions may be conducted with responsible offerors who submit proposals determined to be eligible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(j) **Selection and Ranking.** Proposals shall be evaluated using only the criteria stated in the Request for Proposals and there must be adherence to any weightings that have been previously assigned. Once evaluation is complete, all responsive offerors shall be ranked from most advantageous to least advantageous to the County, considering only the evaluation criteria stated in the Request for Proposals. If price is an initial evaluation criteria, award shall be made in accordance with Section 2-431(k). If price is not an initial evaluation factor, negotiations shall be conducted with the top ranked responsive offeror for performance of the contract at a price which is fair and reasonable to the County. Should the Procurement Director be unable to negotiate a contract at a price which is fair and reasonable to the County, negotiations shall be formally terminated with the top ranked responsive offeror and negotiations commenced with the second most advantageous responsive offeror, and then the third and so on until a satisfactory contract has been negotiated. In conducting negotiations, there must be no disclosure of any information derived from proposals submitted by competing offerors.

(k) **Award.** Award must be made to the responsible and responsive offeror whose proposal is determined in writing to be the most advantageous to the County, taking into consideration price and the evaluation criteria set forth in the Request for Proposals, unless one of the options listed in Section 2-431(l) is utilized. The contract file shall contain the basis on which the award is made. Procedures and requirements for notification of intent to award the contract shall be the same as those stated in Section 2-430(k).

(l) **Other.** If, after following the procedures set forth in Section 2-431(j), a contract is not able to be negotiated, the scope of the Request for Proposals may be changed in an effort to reduce the cost to a fair and reasonable amount, and all responsive offerors must be allowed to submit their best and final offers. Where price was an initial evaluation factor, the using department, through the Procurement Director, may in his/her sole

ORDINANCE 2010-02

Exhibit A

discretion, and not subject to challenge through a protest filed under Section 2-443, proceed in any of the following manners:

- i. negotiate price with the highest scoring offeror. If a satisfactory price cannot be agreed upon, price negotiations may be conducted with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the using department and/or the Procurement Director;
- ii. negotiate with the highest ranking offeror on matters affecting the scope of the contract, so long as the overall nature and intent of the contract is not changed. If a satisfactory contract cannot be negotiated with the highest ranking offeror, negotiations may be conducted with the second, and then the third, and so on, ranked offerors to such level of ranking as determined by the using department and/or the Procurement Director;
- iii. change the scope of the Request for Proposals and give all responsive/responsible offerors an opportunity to submit best and final offers.

If any of these options are chosen, and it is still not possible to award a contract, any of the procedures outlined herein may be repeated until a proposed contract is successfully achieved.

**(m) Minor Informalities and Irregularities in Proposals.** A minor informality or irregularity is one which is merely a form or is some immaterial variation from the exact requirements of the request for proposals having no effect or merely a trivial or negligible effect on total price, quality, quantity, or delivery of the supplies or performance of the contract, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to offerors. The Procurement Director shall either give the offeror the opportunity to cure any deficiency resulting from a minor informality or irregularity in a proposal or waive any such deficiency when it is to the advantage of the County. Such communication or determination shall be in writing. Examples of minor informalities or irregularities may, in the County's sole discretion, include, but are not limited to:

- i. failure of a offeror to return the number of copies of signed proposals required by the solicitation;
- ii. failure of a offeror to furnish the required information concerning the number of the offeror's employees or failure to make a representation concerning its size;
- iii. failure of a offeror to acknowledge receipt of an amendment to a solicitation, when required, but only if the amendment has no effect or merely a trivial or negligible effect on price, quality, quantity, delivery, or relative standing of offerors;
- iv. failure of a offeror to furnish product literature;
- v. failure of a offeror to furnish financial statements;
- vi. failure of a offeror to indicate a bid number on its submission envelope;
- vii. failure of a offeror to indicate his/her contractor's license number.

**(n) Cost of Proposals.** Under no circumstances will the County be liable for any costs associated with any proposal. The offeror shall bear all costs associated with the preparation of proposals.

**(o) Rejection or Acceptance of Proposals; Waiver of Technicalities and Irregularities.** The County shall reserve the unqualified right to reject any and all proposals or accept such proposals, as appears in the County's own best interest. The County shall reserve the unqualified right to waive technicalities or irregularities of any kind in solicitations made under this Chapter. In all cases, the County shall be the sole judge as to whether a proposer's proposal has or has not satisfactorily met the requirements to solicitations made under this Chapter.

**SECTION 2-432. Purchasing Limits.**

**(a) General.** Any contract not exceeding Fifty Thousand Dollars (\$50,000.00) may be made in accordance with the procedures authorized in this Section. Procurement requirements shall not be artificially divided so as to fall within a different purchasing limit.

ORDINANCE 2010-02  
Exhibit A

(b) **Purchases under Two Thousand Five Hundred Dollars (\$2,500.00).** Any purchase not exceeding Two Thousand Five Hundred Dollars (\$2,500.00) may be accomplished without securing competitive quotations if the prices are considered to be fair and reasonable. Competitive quotations need only be taken when the Procurement Director suspects the price may not be fair and reasonable (e.g., comparison to previous price paid, personal knowledge of the price range of the item involved). Every effort should be made to distribute such purchases equitably among qualified suppliers.

(c) **Purchases over Two Thousand Five Hundred Dollars (\$2,500.00) but not exceeding Ten Thousand Dollars (\$10,000.00).** Insofar as it is practical, solicitations of written quotes from a minimum of three qualified sources of supply shall be made by the requesting department and documentation of the quotes attached to the purchase requisition. The award shall be made to the lowest responsive/responsible source after all quotes are reviewed by the Procurement Department.

(d) **Purchases over Ten Thousand Dollars (\$10,000.00) but not exceeding Fifty Thousand Dollars (\$50,000.00).** Insofar as it is practical, solicitations of written quotes from a minimum of three qualified sources of supply shall be made by the Procurement Director. Quotes between Twenty Five Thousand Dollars (\$25,000) and Fifty Thousand Dollars (\$50,000.00) shall be advertised for a minimum of seven (7) calendar days electronically in the South Carolina Business Opportunities publication or other electronic methods. Documentation of the quotes shall be attached to the purchase requisition. The award shall be made to the lowest responsive/responsible source.

(e) **Procurement** reserves the authority to review any request made by a using department pursuant to this section.

(f) **Protest Rights.** The provisions of Section 2-443 shall not apply to contracts awarded under the procedures set forth in this Section.

**SECTION 2-433. Purchasing Card Program.**

(a) The procedures for this program shall be promulgated and amended as needed by the Procurement Director and approved by the County Administrator.

(b) This program shall be discontinued at any time as recommended by the Procurement Director and approved by the County Administrator.

(c) The Cardholder shall use the Purchasing Card for legitimate business purposes only. Misuse of the card will subject the cardholder to disciplinary action in accordance with County policies.

**SECTION 2-434. Sole Source Procurement.**

Any request by an agency or department head that a procurement be restricted to one potential source shall be accompanied by a letter from the using department signed by the department head stating why no other source will be suitable or acceptable to meet the needs. In such instance, a contract may be awarded for a property, supply, service, or construction item without competition when the Procurement Director determines in writing that there is only one source for the required property, supply, service, or construction item or that the proposed award to a single source is a permitted, non-competitive procurement as established herein. After verification of a sole source vendor, or the justification of a sole source purchase is warranted, the Procurement Director has the authority to negotiate the price, terms, and conditions of the procurement. An example of a permissible, non-competitive procurement includes, but is not limited to where the Procurement Director and the Department Head have deemed the compatibility of equipment, accessories, services, systems, software or replacement parts is of paramount importance.

**SECTION 2-435. Emergency Procurements.**

Notwithstanding any other provision of this Article, the Procurement Director may make or authorize others to make emergency procurements of property, supplies, services, and/or construction when there exists a threat to public health, welfare, or safety under emergency conditions, provided that such emergency



ORDINANCE 2010-02

Exhibit A

procurements shall be made with such competition as is practicable under the circumstances. A written determination by the using department of the basis for the emergency and for the selection of the particular contractor shall be provided to the Procurement Department and included in the contract file.

**SECTION 2-436. Professional Services.**

(a) **Authority.** The Procurement Director may procure professional services on behalf of the using department and the County in accordance with the selection procedures specified in this Section.

(b) **Selection Procedure.**

i. **Conditions for Use.** Except as provided under Section 2-434 (Sole Source Procurement) or Section 2-435 (Emergency Procurements), professional services shall be procured in accordance with this Subsection.

ii. **Statement of Qualifications.** Businesses engaged in providing the designated types of professional services may submit statements of qualifications and expressions of interest in providing such professional services. A using department utilizing such professional services may specify a uniform format for statements of qualifications. Businesses may amend these statements at any time by filing a new statement.

iii. **Public Announcement and Form of Request for Proposals.** Adequate notice of the need for such services shall be given by the using department requiring the services through a Request for Proposals, which will be provided, at a minimum, to all businesses which have submitted statements of qualification and expressions of interest. The Request for Proposals shall describe the services required, list the types of information and data required of each offeror, and state the relative importance of particular qualifications.

iv. **Discussions.** The Procurement Director along with the head of the using department procuring the required professional services may conduct discussions with any offeror who has submitted a proposal to determine such offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.

v. **Award.** Award shall be made to the offeror determined in writing by the Procurement Director to be best qualified based on the evaluation factors set forth in the Request for Proposals, and based on negotiation of compensation determined to be fair and reasonable. If compensation cannot be agreed upon with the best qualified offeror, then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked best qualified if the amount of compensation for that offeror is determined to be fair and reasonable.

vi. **Protest Rights.** The provisions of Section 2-443 shall not apply to contracts awarded under the procedures set forth in this Section.

(c) **Exceptions.** Professional Services as defined in this section that are estimated to not exceed Twenty Five Thousand Dollars (\$25,000.00) may be awarded by direct negotiation and selection, taking into account the following factors:

- i. the type of services required;
- ii. the proximity (location) of the professional providing the services;
- iii. the capability of the professional to produce the required service within a reasonable time;
- iv. past performance and
- v. the ability to meet the budget requirements.

ORDINANCE 2010-02  
Exhibit A

**SECTION 2-437. Cancellation of Invitations to Bid or Requests For Proposals.**

An Invitation to Bid, a Request for Proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or part when it is in the best interest of the County. Documentation supporting the reason(s) for cancellation or rejection shall be made a part of the solicitation file. Under no circumstances will the County be liable for any costs associated with any bid or proposal. The bidder or offeror shall bear all costs associated with the preparation of bids and proposals.

**SECTION 2-438. Qualifications and Duties of Bidders and Offerors.**

**(a) Responsibility of Bidders and Offerors.**

- i. **Determination of Responsibility.** Responsibility of the bidder or offeror shall be ascertained by the Procurement Director for each contract entered into by the County based upon full disclosure to the Procurement Director concerning capacity to meet the terms of the contracts and based upon past record of performance for similar contracts.
- ii. **Determination of Non-responsibility.** If a bidder or offeror who otherwise would have been awarded a contract is found non-responsible, a written determination of non-responsibility, setting forth the basis of the finding, shall be prepared by the Procurement Director. The unreasonable failure of a bidder or offeror to supply information promptly in connection with an inquiry with respect to responsibility may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

**(b) Cost or Pricing Data.**

- i. **Required Submissions Relating to the Award of Contracts.** A prospective contractor shall submit cost or pricing data when the contract is expected to exceed Fifty Thousand Dollars (\$50,000.00) and is to be awarded under Section 2-431 (Competitive Sealed Proposals), Section 2-434 (Sole Source Procurement), or Section 2-442(h) (Architect-Engineer and Land Surveying Services), Section 2-430 (Competitive Sealed Bids).
- ii. **Exceptions.** The submission of cost or pricing data relating to the award of a contract is not required when: (a) the contract price is based on adequate price competition; (b) the contract price is based on established catalogue price or market prices; (c) the contract price is set by law or regulation; or (d) it is determined in writing by the Procurement Director that the requirements of Section 2-438(b)i. may be waived, and the determination states the reasons for such waiver.
- iii. **Required Submissions Relating to Change Orders or Contract Modifications.** A contractor shall submit cost or pricing data prior to the pricing of any change order or contract modification, including adjustments to contracts awarded by Competitive Sealed Bidding, whether or not cost or pricing data were required in connection with the initial pricing of the contract.
- iv. **Price Adjustment Provision Required.** Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the County, including profit or fee, shall be adjusted to exclude any significant sums by which the County finds that such price was increased because the contractor furnished cost or pricing data as submitted was inaccurate, incomplete, or not current as of the date agreed upon between the County and the contractor.
- v. **Certification Required.** A contractor, actual or prospective, required to submit cost or pricing data in accordance with this Section, shall certify that the cost or pricing data submitted was accurate, complete, and current as of a mutually specified date prior to the award of the contract or the pricing of the change order or contract modification.

**(c) Change Orders.** The Procurement Director shall have the authority to approve all change orders and contract modifications up to Twenty Five Thousand Dollars (\$25,000.00) as long as the cumulative total contract amount does not exceed Twenty Five Thousand Dollars (\$25,000.00) and the total amount does not exceed the budgeted amount approved by County Council. The County Administrator shall approve all change orders over Twenty Five Thousand Dollars (\$25,000.00) but less than Fifty Thousand Dollars (\$50,000.00), as long as the



ORDINANCE 2010-02

Exhibit A

cumulative total contract amount does not exceed Fifty Thousand Dollars (\$50,000.00) and the total amount does not exceed the budgeted amount approved by County Council. Any change order over Fifty Thousand Dollars (\$50,000.00) or in excess of the budgeted amount must be approved by County Council.

(d) **Bid and Performance Bonds on Supply or Service Contracts.** All contracts for equipment, supplies, and services may require bid security and performance bonds at the discretion of the Procurement Director in consultation with the using department head. Bid security when required, shall be in an amount equal to at least five percent (5%) of the amount of the bid. Performance bonds, when required, will normally be equal to one hundred percent (100%) of the contract. A determination regarding bids received for equipment, supplies, and services without requiring bid security will be made by the Procurement Director in the same manner as provided for in Section 2-442(c). A cashier's/official bank check made payable to the County may be submitted in lieu of a bond, or a letter of credit under circumstances deemed acceptable by the Procurement Director and the County Attorney's office. Bonding requirements will be set forth in the solicitation.

**SECTION 2-439. Types of Contracts.**

(a) **Limitation on Contracts.** Subject to the limitations of this Section, any type of contract which will promote the best interest of the County may be used; except that the use of a cost reimbursement contract (cost-plus-a-percentage-of-cost contract) is prohibited.

(b) **Multi-Term Contracts.**

i. **Specified Period.** To the extent permitted by law, a contract for supplies or services may be entered into for a period of time not to exceed a total of five (5) years, provided the terms of the contract and the conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Extension beyond the five year total will be at the discretion of the County Administrator or as County Council may direct. Payment and performance obligations for succeeding fiscal periods shall be made subject to the availability and appropriation of funds therefore and shall not be subject to non-substitution provisions.

ii. **Determination Prior to Use.** Prior to the utilization of a multi-term contract, it shall be determined in writing by the using department: (a) that estimated requirements cover the period of the contract and are reasonably firm and continuing; and (b) that such a contract will serve the best interest of the County by encouraging effective competition or otherwise promoting economies in County procurement.

iii. **Cancellation Due to Unavailability and Non-Appropriation of Funds in Succeeding Fiscal Periods.** All multi-term contracts shall contain a clause stating that when funds are not appropriated to support continuation of performance in any subsequent fiscal period, the contract shall be cancelled. Such contracts shall also provide that the County is not subject to a non-substitution provision.

(c) **Leasing Contracts.**

i. **Lease/Purchase Agreements.** A lease/purchase financing agreement is a contract by which one party conveys property to another for a period of time in exchange for the payment of interest and a portion of principal on the purchase price of the property. The use of lease/purchase financing will be limited to those situations in which it is in the County's best interest to secure third party financing. The use of lease/purchase financing shall be approved by County Council. Purchases made with lease purchase financing are made using the same purchasing guidelines as other purchases.

ii. **Rental of Equipment.** Equipment should only be rented to fill short-term equipment needs. This may include one-time, short-term needs or short-term needs that may be re-occurring in which the rental of equipment is more cost effective than ownership of the equipment.

iii. **Lease of Business Personal Property.** A business lease is a contract for the use of equipment or other supplies under which Title does not pass to the County unless there is a purchase option, where Title may pass to the County at some future time. A lease may be entered into provided: (a) that it is in the best interests of the County, (b) all conditions for renewal and costs of termination are set forth in the lease, and (c) the lease shall be obtained using normal Procurement procedures.

ORDINANCE 2010-02  
Exhibit A

iv. **Lease with Purchase Option.** A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive bidding, or competitive sealed proposal, or the leased equipment is the only equipment that can meet the County's requirements, as determined in writing by the department head of the using department and the Procurement Director.

(d) **Maintenance Contracts.** All maintenance contracts and agreements must be procured by the Procurement Department. A requisition is required for all maintenance agreements regardless of the dollar amount. Whenever practical, the terms of maintenance contracts shall be resolved in connection with the original solicitation for the item or equipment, which is the subject of the maintenance contract. Maintenance contracts may be reviewed by the Procurement Director or the County Administrator for proper terms and conditions as well as fair pricing. Maintenance contracts may only be approved by the Procurement Director or the County Administrator. Renewals of existing contracts in excess of Fifty Thousand Dollars (\$50,000.00) that have already been funded by County Council in the Budget Ordinance may also be executed by the County Administrator. New contracts in excess of Fifty Thousand Dollars (\$50,000.00) where funds were not previously specifically authorized by County Council, or as the County Administrator otherwise deems necessary, must be awarded by County Council.

**SECTION 2-440. Right to Inspect Business and Audit of Records.**

(a) **Right to Inspect Business.** The County may, at reasonable times, inspect the part of the place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the County.

(b) **Auditing.**

i. **Audit of Cost or Pricing Data.** The County may, at reasonable times and places, audit the books and records of any business who has submitted cost or pricing data pursuant to Section 2-438(b) (Cost or Pricing Data) to the extent that such books and records relate to such cost or pricing data. Any business who receives a contract, change order, or contract modification for which cost or pricing data is required, shall maintain such books and records that relate to such cost or pricing data for three (3) years from the date of final payment under the contract, unless a shorter period is otherwise authorized in writing.

ii. **Contract Audit.** The County shall be entitled to audit the books and records of a contractor or subcontractor under any negotiated contract or subcontract other than firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of three (3) years from the date of final payment under the subcontract, unless a shorter period is otherwise authorized in writing.

**SECTION 2-441. Contract Terms and Specifications.**

(a) **Maximum Practical Competition.** All specifications shall be drafted so as to assure cost effective procurement for the purposes intended and encourage competition in satisfying the County's needs, and shall not be unduly restrictive. Any use of characteristics that serve to limit competition shall be avoided. The policy enunciated in this Section applies to all specifications including but not limited to, those prepared for the County by architects, engineers, designers, draftsmen, and land surveyors.

(b) **Duties of the Procurement Director and the Using Departments.** The Procurement Director may prepare or review, issue, revise and maintain the specifications for property, supplies, services, and construction required by the County. The Procurement Director may obtain expert advice and assistance from personnel of the using departments or other advisory sources in the development of specifications and may delegate to a Using Department the authority to prepare its own specifications. Specifications for property, supplies, services, or construction items exempted in Section 2-428, may be prepared by the Using Department in accordance with the provisions of this Article.

(c) **Brand Name or Equal Specification.**

Exhibit A

i. **Use.** Brand name or equal specifications may be used when the Using Department makes a written determination that one of the following exists: (a) no other design or performance specification or qualified products list is available; (b) time does not permit the preparation of another form of purchase description not including a brand name specification; (c) the nature of the product or the nature of the County's requirements makes use of a brand name or equal specifications suitable for the procurement; or (d) use of a brand name or equal specification is in the County's best interests.

ii. **Required Characteristics.** Unless the Procurement Director determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

iii. **Nonrestrictive Use of Brand Name or Equal Specifications.** Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(d) **Brand Name Only Specification.**

i. **Use.** Since use of a "brand name only" specification is restrictive of product competition, it may be used only when the using agency makes a written determination that only the identified brand name item or items will satisfy the County's needs and such determination is approved, in writing, by the Procurement Director.

ii. **Competition.** The Procurement Director shall seek to identify sources from which the designated brand name only item or items can be obtained and shall solicit such sources to achieve whatever degree of price competition is practicable. If only one source can supply the requirement, the procurement may be made under Section 2-434 (Sole Source Procurement).

(e) **Contract Clauses and Their Administration.**

i. **Contract Clauses.** All contracts for property, supplies, services, and construction shall include provisions necessary to define the responsibilities and rights of the parties to the contract consistent with this Article, and containing the mandatory provisions and language of this Article. The Procurement Director may also issue clauses appropriate for property, supply, service, or construction contracts, addressing at least the following subjects:

(a) the unilateral right of the County to order, in writing, changes in the work within the scope of the contract;

(b) the unilateral right of the County to order, in writing, temporary stoppage of the work or delaying performance that does not alter the scope of the contract;

(c) variations occurring between estimated quantities of work in a contract and actual quantities;

(d) defective pricing;

(e) liquidated damages;

(f) specified excuses for delay or non-performances;

(g) termination of the contract for default;

(h) termination of the contract in whole or in part for the convenience of the County;

(i) suspension of work on a construction project ordered by the County; and

(j) site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site condition clauses need not be included in a contract:

1. when the contract is negotiated;

2. when the contract provides the site or design; or

ORDINANCE 2010-02  
Exhibit A

3. when the parties have otherwise agreed with respect to the risk of differing site conditions.

ii. **Price Adjustment.** Adjustments in price resulting from the use of contract clauses required in Subsection 1 of this Section shall be computed in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) by unit prices specified in the contract or subsequently agreed upon;
- (c) by the cost attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
- (d) in such other manner as contracting parties may mutually agree; or
- (e) in the absence of agreement by the parties, by unilateral determination by the County of the reasonable costs allocable, either directly or indirectly, to the events or situations under such clauses as accounted for in accordance with generally accepted accounting principles, and with adjustment of profit or fee, as appropriate, and subject to the provisions of Section 2-443.

A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of Section 2-438(b) (Cost or Pricing Data).

iii. **Standard Clauses and Their Modification.** The Procurement Director may establish, after consultation with the County Attorney, standard contract clauses, consistent with this Article and containing the mandatory provisions and the language of this Article, for use in County contracts.

**SECTION 2-442. Construction Contracts.**

(a) **Construction Management Services, Design-Build Services, Turnkey Management Services.** County Council finds that certain non-traditional means of public construction project management can be in the best interests of the County in certain circumstances. Therefore, the following methods may be employed under the following circumstances:

- i. The Procurement Director, with approval of the County Administrator, shall have the discretion to use construction management services, design-build services, or turnkey management services as alternatives for construction contracting administration. In exercising such discretion, the County Administrator shall consider the method which in the County Administrator's discretion is the most advantageous to the County and will result in the most timely, economical, and successful completion of the construction project. The determination of the method of source selection utilized shall be stated in writing and included as part of the solicitation file.
- ii. If the County Administrator determines that the use of construction management services, design-build services or turnkey management services is the most advantageous means of securing the construction contracting administration set forth in this section, and the amount of services to be secured thereby is anticipated to exceed Five Million Dollars (\$5,000,000.00), the selection of the method of construction contracting administration used by the County and set forth in this section shall be submitted for review and approval by the County Council, which will make findings of fact to support any decision to use such services.
- iii. The competitive sealed proposal method of construction contracting administration, using Requests for Proposals prepared in accordance with section 2-431, is the most advantageous to the County, and the County shall use the competitive sealed proposal method as set forth in Section 2-431 for the purposes of procuring construction management services, design build services, or turnkey management services or any other similar type of construction management contract. The County Administrator may retain outside consulting services to prepare such Requests for Proposals. The Request for Proposals for any of these services shall set forth the criteria which the County will be using to select the successful proposal.



ORDINANCE 2010-02

Exhibit A

(a) **Bid Security.**

- i. **Requirement for Bid Security.** Bid security shall be required for all competitive sealed bidding and competitive sealed proposals for construction contracts when the price is estimated by the Procurement Director to exceed Five Hundred Thousand Dollars (\$500,000.00). Bid security shall be a legitimate bid bond provided by a surety company authorized to do business in South Carolina, or the equivalent in cash, or otherwise supplied in the form satisfactory to the County (surety bond, certified check, cashiers' check or official money order). Nothing herein prevents the requirement of such bonds on any construction contracts when the circumstances warrant.
- ii. **Amount of Bid Security.** Bid security shall be in an amount equal to at least five percent (5%) of the amount of the bid or proposal and shall remain in place until completion of construction or posting of performance and payment bonds.
- iii. **Rejection of Bid for Noncompliance with Bid Security Requirements.** When the invitation to bid or request for proposal requires security, noncompliance requires that the bid be rejected (except that a bidder or offeror who fails to provide bid security in the proper amount or a bid bond with the proper rating shall be given one working day from bid opening to cure such deficiencies. If the bidder or offeror cannot cure these deficiencies within one working day of bid opening, his/her bid or proposal shall be rejected).
- iv. **Withdrawal of Bids or Proposals.** After the bids or proposals are opened, they shall be irrevocable for the period specified in the invitation to bid or request for proposal. If a bidder is permitted to withdraw its bid before bid opening pursuant to Section 2-430(i) (Competitive Sealed Bidding, Correction or Withdrawal of Bids, Cancellation of Awards) or if a offeror is permitted to withdraw his/her proposal prior to the opening of proposals, no action shall be had against the bidder or proposer on the bid security.

(b) **Contract Performance and Payment Bonds.**

- i. **When Required - Amounts.** When a construction contract is awarded in excess of Five Hundred Thousand Dollars (\$500,000.00) the following bonds or security shall be delivered to the County and shall become binding on the parties upon the execution of the contract: (a) a performance bond satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the County, in an amount equal to one-hundred percent (100%) of the price specified in the contract; and (b) a payment bond satisfactory to the County, executed by a surety company authorized to do business in this State or otherwise secured in a manner satisfactory to the County, for the protection of all businesses supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one-hundred percent (100%) of the price specified in the contract.
- ii. **Reduction of Bond Amounts.** The County Administrator is authorized to reduce the amount of performance and payment bonds to fifty percent (50%) of the contract price for each bond, when it has been determined in writing such reduction is necessary or warranted and is in the best interests of the County to do so.
- iii. **Authority to Require Additional Bonds.** Nothing in this subsection shall be construed to limit the authority of the County to require a performance bond or other security in addition to those bonds.

(c) **Bond Forms.** The Procurement Director shall promulgate by regulation the form of the bonds required by this Section.

(d) **Fiscal Responsibility.** In addition to the authorities and requirements set forth in Section 2-438(c), every contract modification, change order, or contract price adjustment under a construction contract with the County shall be subject to prior approval as set forth in Section 2-438(c), after receiving a report from the County Finance Director as to the effect of the contract modification, change order, or contract price adjustment on the total project budget or the total contract budget.

(e) **Architect, Engineer and Land Surveying Services and Methods of Selection.**

- i. **Policy.** It is the policy of the County to announce publicly all requirements for architect-engineer, construction management, and land surveying services and to negotiate contracts for such services on



ORDINANCE 2010-02  
Exhibit A

the basis of demonstrated competence and qualification for the particular type of services required and at fair and reasonable prices.

- ii. **On Call Professional Services.** A broad range of architect, engineer and land surveying services may be available through an on-call, as needed professional service contract. For illustration purposes, the following elements should be basic to this type of contractual agreement: (a) agreements may be multi-year, (b) agreements will establish hourly rates for each type of service and other charges, (c) agreements will not provide any guarantee of projects, nor identify any specific project to be assigned, (d) as specific projects are assigned, the County will execute a simple contract modification to add the project and to detail the project's specific scope and services to be provided, the agreed upon number of hours and the time frame for completion, and (e) if the Procurement Director is not satisfied with an architect, engineer and land surveying business's proposal to provide services, the Procurement Director may negotiate with another architect, engineer and land surveying business with an on-call agreement to pursue a more acceptable proposal for the project.
- iii. In the procurement of architect-engineer and land surveying services, the Procurement Director shall publically request architect, engineer and land surveying businesses to submit a statement of qualifications and performance data. The request must include, but not be limited to, the project title, the general scope of work, a description of all professional services required, the submission deadline, and how interested businesses may apply for consideration.
- iv. **Selection Process.** A selection committee composed of the Procurement Director, head of using department in need of the architect-engineer or land surveying services, and those determined to be qualified to make an informed decision as to the most competent and qualified business for the proposed project, shall conduct interviews with at least three (3) businesses deemed most qualified to provide the required services on the basis of information available before the interviews. The selection committee shall evaluate each of the businesses interviewed in view of their:
  - (a) past performance;
  - (b) the ability of professional personnel;
  - (c) demonstrated ability to meet time and budget requirements;
  - (d) location and knowledge of the locality of the project if the application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project;
  - (e) recent, current, and projected workloads of the business;
  - (f) creativity and insight related to the project;
  - (g) related experience on similar projects;
  - (h) volume of work awarded by the using department to the business during the previous five years, with the objective of effectuating an equitable distribution of contracts by the County among qualified architect, engineer and land surveying businesses including Disadvantaged Business Enterprises, Small Business Enterprises, Minority Business Enterprises, and Women's Business Enterprises; and
  - (i) any other special qualification required pursuant to the solicitation.

Based upon these evaluations, the selection committee shall select the three (3) businesses that, in its judgment, are the best qualified, ranking them in priority order. The selection committee's report ranking the three (3) chosen businesses must be in writing and include data substantiating its determinations.

- v. **Notice of Selection and Ranking.** When it is determined by the Procurement Director that the ranking report is final, written notification of the highest ranked business must be sent immediately to all businesses responding to the solicitation.
- vi. **Negotiation of Contract.** The selection committee shall negotiate a contract with the highest qualified business for architect-engineer or land surveying services at compensation which is considered to be fair and reasonable to the County. In making this decision, the committee shall take

ORDINANCE 2010-02

Exhibit A

into account the established value, the scope, the complexity, and the professional nature of the services to be rendered. Should the committee be unable to negotiate a satisfactory contract with the business considered to be most qualified, negotiations with that business shall be formally terminated. The committee shall then undertake negotiations with the second most qualified business. Failing award with the second most qualified business, the committee shall formally terminate negotiations. The committee shall then undertake negotiations with the third most qualified business. Should the committee be unable to negotiate a contract with any of the selected firms, the selection committee shall select additional firms in order of their competence and qualifications and continue negotiations in accordance with this Section.

**vii. Exceptions for Small Architect-Engineer and Land Surveying Services Contracts.**

(a) Architect-Engineer and Land Surveying Services which are estimated to not exceed Twenty Five Thousand Dollars (\$25,000.00) may be awarded by direct negotiation and selection, taking into account:

- (i). the nature of the project;
- (ii). the proximity of the architect-engineer or land surveying services to the project;
- (iii). the capability of the architect, engineer, or land surveyor to produce the required service within a reasonable time;
- (iv). past performance; and
- (v). ability to meet project budget requirements.

(b) Fees paid to an Architect-Engineer or Land Surveying business during the twenty-four (24) month period immediately preceding the award of a contract under an exception found in this subsection shall not exceed Seventy Five Thousand Dollars (\$75,000.00).

(c) A larger project may not be broken into smaller projects for the purposes of circumventing the provisions of this Section.

**viii. Architect, engineer, or construction manager; performance of other work.** An architect or engineer performing design work, or a construction manager performing construction management services under a contract awarded pursuant to the provisions of subsection 2-442(g), may not perform other work, by later amendment or separate contract award, on that project as a contractor or subcontractor either directly or through a business in which he/she or his/her architectural engineering or construction management business has greater than a five percent interest. For purposes of this section, safety compliance and other incidental construction support activities performed by the construction manager are not considered work performed as a contractor or subcontractor. This subsection applies only to procurements for construction using the Construction Management, Design-Build, and Turnkey Management project delivery methods.

**SECTION 2-443. Protest Procedure.**

(a) **Right to Protest.** Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Procurement Director, except as otherwise stated in this Article. The protest shall be submitted in writing within seven (7) calendar days after such aggrieved prospective bidder, offeror, or contractor knows or should have known of the facts giving rise thereto.

(b) **Authority to Resolve Protests.** The Procurement Director shall have authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest by an aggrieved bidder, offeror, or a contractor, actual or prospective, concerning the solicitation or award of a contract.

(c) **Decision on Protests.** If the protest is not resolved by mutual agreement, the Procurement Director shall issue a decision in writing within ten (10) calendar days. The decision shall: (a) state the reasons for the action taken; and (b) inform the protestant of the protestant's rights to appeal the decision of the Procurement Director as provided in this Section.

ORDINANCE 2010-02  
Exhibit A

(d) **Notice of Decision on Protests.** A copy of the decision under Subsection 2-443(d) of this Section shall be mailed or otherwise furnished to the protestant.

(e) **Finality of Decision on Protests.** A decision under Subsection 2-443(c) of this Section shall be final and conclusive, unless a business adversely affected by the decision appeals administratively to the County Council in accordance with this Section.

(f) **Authority to Debar or Suspend.** After reasonable notice to the business or person involved and reasonable opportunity for that business or person to be heard, the Procurement Director shall have authority to debar a business or person for cause from consideration for award of contracts. The Procurement Director shall also have the authority to suspend a business or person from consideration for award of contracts if there is probable cause to believe that the business or person has engaged in any activity which might lead to debarment. The period of debarment or suspension shall be as prescribed as appropriate by the Procurement Director.

(g) **Causes for Debarment or Suspension.** The causes for debarment or suspension shall include, but not be limited to, the following:

- i. Conviction of a business or any of its principal officers or employees for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- ii. a determination by the Procurement Director that the business, as an offeror or bidder engaged in misuse of the County's protest procedure, including, but not limited to, the filing of frivolous protests or appeals, the filing of protests or appeals whereby it is clear that the basis of an appeal would not result in the protestant being awarded a contract under a solicitation, or the filing of protests or appeals intended to cause delay in awarding a contract;
- iii. a determination by the Procurement Director that the business as an offeror or bidder engaged in collusion or other anti-competitive practices;
- iv. conviction of a business or any of its principal officers or employees under State or Federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, or directly affects responsibility as a County contractor;
- v. conviction of a business or any of its principal officers or employees under State or Federal antitrust statutes arising out of the submission of bids or proposals;
- vi. violation by a business or any of its principal officers or employees of contract provisions of a character which is regarded by the Procurement Director to be so serious as to justify debarment action;
- vii. deliberate failure of the business without good cause to perform in accordance with the Specifications or within the time limit provided in a contract with the County;
- viii. a recent record by the business of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- ix. any other cause the Procurement Director determines to be so serious and compelling as to affect responsibility as a County contractor, including debarment by another governmental entity for cause; or
- x. for violation by a business or any of its principal officers or employees of the ethical standards set forth in Chapter 13 of Title 8 of the South Carolina Code of Laws, 1976, as amended (the State Ethics Act).

(h) **Decision on Debarment or Suspension.** The Procurement Director shall issue a written decision to debar or suspend. The decision shall:

- i. state the reasons for the action taken; and



ORDINANCE 2010-02

Exhibit A

ii. inform the debarred or suspended business or person involved of business or person's rights to administrative review as provided in this Article.

(i) **Notice of Decision on Debarment or Suspension.** A copy of the decision under subsection 2-443(h) shall be mailed or otherwise furnished to the debarred or suspended business or person. For the purposes of subsection 2-443(i)ix., such notice shall be deemed received three (3) calendar days after such mailing, or on the day of actual delivery.

(j) **Finality of Decision on Debarment or Suspension.** A decision under subsection 2-443(h) of this Section shall be final and conclusive, or unless the debarred or suspended business or person submits a timely appeal to the Procurement Director in accordance with this Section. Debarment is not stayed pending appeal.

(k) **Contract and Breach of Contract Controversies.**

i. **Applicability.** This subsection applies to controversies between the County and a contractor and which arise under, or by virtue of, a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or revision.

ii. **Authority.** The Procurement Director is authorized, prior to commencement of an action in a court concerning the controversy, to settle and resolve a controversy described in subsection 2-443(k)i. of this subsection.

iii. **Decision.** If such a controversy is not resolved by mutual agreement, the Procurement Director shall promptly issue a decision in writing. The decision shall: (a) state the reason for the action taken; and (b) inform the contractor of the contractor's rights to administrative review as provided in this Article.

iv. **Notice of Decision.** A copy of the decision under subsection 2-443(k)iii. of this subsection shall be mailed to the contractor.

v. **Finality of Decision.** The decision under subsection 2-443(k)iii. of this Section shall be final and conclusive, unless fraudulent, or unless the contractor submits a timely appeal to the Procurement Appeals Board in accordance with this Section.

vi. **Failure to Render Timely Decision.** If the Procurement Director does not issue the written decision required under subsection 2-443(k)iii. of this subsection within a reasonable time after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

(l) **Finality and Appeal of Procurement Director's Decisions.** The decision of the Procurement Director shall be final unless appealed to County Council by either the County or the business or person, within ten (10) days after service of notice of the Procurement Director's decision, using the same time criteria of subsection 2-443(i). If such a decision is appealed to County Council, County Council shall review the records and without further hearing affirm, modify, or deny the appeal in open session. The decision of County Council shall be final and any stay that may be instituted shall be lifted at that time. Service of notice of the decision of County Council may be accomplished by delivery in person or by mailing, and shall be complete when either delivered in person or placed in the mail. Service may be made either to the business or person or to the business or person's attorney.

(m) **Stay of Procurement During Protest or Appeal.** In the event of a timely protest under this section, the County shall not proceed further with the solicitation or with the award of the Contract until a final decision has been made and the time for appeal has expired, unless the Procurement Director, after consultation with the head of the using department, makes a written determination that the award of the Contract is necessary to protect substantial interests of the County.

(n) **Solicitations or Awards in Violation of the Law.** The provisions of this subsection apply where it is determined by the Procurement Director, or upon administrative review, and in the County's sole discretion, that a solicitation or award of a contract is in violation of law.

a. **Remedies Prior to Award.** If prior to award, it is determined that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be:

ORDINANCE 2010-02

Exhibit A

- i. cancelled; or
- ii. revised to comply with the law and rebid; or
- iii. revised to comply with the law and awarded in a manner that complies with the provisions of this Article.

**b. Remedies After An Award.** If after an award of a contract, it is determined that the solicitation or award is in violation of law, then:

- i. if the business awarded the contract has not acted fraudulently or in bad faith:
  - 1. the contract may be ratified and affirmed, provided it is determined that doing so is in the best interest of the County; or
  - 2. the contract may be terminated and the business awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to the termination.
- ii. if the business awarded the contract has acted fraudulently or in bad faith:
  - 1. the contract may be declared null and void; or
  - 2. the contract may be ratified and affirmed if such action is in the best interest of the County, without prejudice to the County's right to such damages as may be appropriate.

**SECTION 2-444. Intergovernmental Relations.**

(a) **Cooperative Procurement Authorized.** The Procurement Director may either participate in, sponsor, conduct, or administer a cooperative procurement agreement for the procurement of property, supplies, services, or construction services with one or more Public Procurement Units in accordance with an agreement entered into between the participants. Such cooperative procurement may include, but is not limited to, joint or multi-party contracts between Public Procurement Units. Examples of such cooperative procurement are General Services Administration (GSA) contracts, supplies and/or services procured from another governmental agency, and the U.S. Communities Government Purchasing Alliance.

(b) **Sale, Acquisition or Use of Supplies.** The Procurement Director may sell to, acquire from, or use any supplies belonging to another Public Procurement Unit independent of the requirements of this Article.

(c) **Cooperative Use of Supplies or Services.** The Procurement Director may enter into an agreement, independent of the requirements of this Article, with any Public Procurement Unit for the cooperative use of supplies or services under the terms agreed upon between the parties.

(d) **Joint Use of Facilities/Equipment.** The Procurement Director may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another Public Procurement Unit under the terms agreed upon between the parties.

(e) **Use of State Contracts.** The Procurement Director may, independent of the requirements of this Article, procure supplies, services or construction items through the contracts established by the Purchasing Division of the State as provided in Chapter 35 of Title 11 of the South Carolina Code of Laws, 1976, as amended (State Consolidated Procurement Code).

**SECTION 2-445. Supply Management.**

(a) **Receiving and Inventory Regulations.** The Procurement Director shall promulgate regulations and procedures to insure proper receipt, identification, and inventory control for all supplies purchased for County use.

(b) **Prequalification of Suppliers.** Prospective suppliers may be prequalified for particular types of property, supplies, services, and/or construction. Solicitation mailing lists of potential contractors shall include but shall not be limited to such prequalified suppliers.



ORDINANCE 2010-02

Exhibit A

(c) **Sale, Transfer and Disposal of Surplus Supplies and Property.** Subject to County Council's review and approval by resolution, the Procurement Director shall promulgate regulations governing the sale, transfer, or disposal of surplus supplies and property by public auction, competitive sealed bidding or other appropriate methods designated by such regulations, and the transfer of excess supplies between departments. The Procurement Director shall have authority to transfer such items to other County departments or to approve the disposal of unwanted items that cannot be sold.

(d) **Trade-In Sales.** The Procurement Director shall promulgate regulations and procedures to govern the trade-in of personal property owned by the County.

(e) **Allocation of Proceeds from Sale or Disposal of Surplus Supplies.** Proceeds from the sale or disposal of surplus supplies and property shall be deposited into the County's general fund except for any proceeds from the sale of equipment belonging to the County rock quarry, which will be deposited back into the enterprise account for that activity.

(f) **Sale of Surplus Stone and Gravel Products.** The County Council recognizes that there are from time to time surplus stone, gravel and related quarry products available for sale at the County rock quarry, purely as a by-product of the County's operation of the County rock quarry for its own use, and that it is desirable that a method for such sales, priorities of customers seeking to acquire such products, and the method of payment and accounting for such sales is provided. The Rock Quarry Director and the Procurement Director shall promulgate regulations and procedures to govern the sale of quarry products.

**SECTION 2-446. Real Property.**

(a) The County acknowledges that all parcels of real property are unique and principles of competitive bidding do not apply to distinct and singular purchases of real property by the County.

(b) The following rules shall apply to the sale or lease of County-owned real property:

- i. The County shall sell, contract to sell, acquire by purchase, exchange or gift, real property only upon approval of County Council. At least one appraisal by a certified appraiser shall be received.
- ii. The County shall contract to lease, sublease, or cause to be leased real property for a definite period of more than one year only upon approval by County Council.
- iii. A public hearing must be held, after reasonable public notice, and an ordinance enacted, prior to final County action to sell, lease, or otherwise dispose of real property owned by the County.

STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE  
**ORDINANCE 2010-04**

**AN ORDINANCE TO AMEND THE AGREEMENT AUTHORIZED BY  
ORDINANCES NO. 2006-027 AND 2008-017 RELATING TO THE  
INDUSTRIAL/BUSINESS PARK OF OCONEE AND PICKENS  
COUNTIES SO AS TO ENLARGE THE PARK.**

**WHEREAS**, pursuant to Ordinance No. 2006-027 enacted on December 5, 2006 by Oconee County Council, Oconee County (the "County") entered into an Agreement for Development of Joint County Industrial and Business Park dated as of January 16, 2007 with Pickens County (the "Agreement"), which was subsequently amended by Ordinance No. 2008-17 enacted on October 21, 2008 by the County resulting in the Agreement as amended by the First Amendment to the Agreement dated November 3, 2008 (hereinafter collectively referred to as the "Park Agreement"); and

**WHEREAS**, pursuant to Section 3 of the Park Agreement, the boundaries of the park created therein (the "Park") may be enlarged pursuant to ordinances of the respective County Councils of the County and Pickens County; and

**WHEREAS**, the County is desirous of enlarging the Park by the addition of the property described on Exhibit A of the Second Amendment to the Agreement, attached hereto;

**NOW, THEREFORE**, be it ordained by Oconee County Council that the Park Agreement is hereby and shall be amended by the Second Amendment to the Agreement to include the property in Oconee County described in the schedule attached to the Second Amendment to the Agreement as Exhibit A (as such description may be hereafter refined), and that the Chairman of Oconee County Council is hereby authorized to execute and deliver any desired amendments to the Park Agreement necessary to accomplish the aforesaid enlargement.

**Section 1.** The Chairman of the County Council and the Clerk of the County Council, for and on behalf of the County, are hereby each authorized and directed to do any and all things necessary to effect the execution and delivery of the Second Amendment to the Agreement and the performance of all obligations of the County under and pursuant to the Second Amendment to the Agreement and this Ordinance.

**Section 2.** All orders, resolutions, ordinances and parts thereof in conflict herewith are, to the extent of such conflict, hereby repealed and this Ordinance shall take effect and be in full force from and after its passage and approval.

DONE in meeting duly assembled this 16th day of March, 2010.

**OCONEE COUNTY, SOUTH CAROLINA**

(SEAL)

By: \_\_\_\_\_  
Reginald T. Dexter, Chairman, County Council  
Oconee County, South Carolina

ATTEST:

By: \_\_\_\_\_  
Elizabeth G. Hulsc, Clerk to County Council  
Oconee County, South Carolina

First Reading: February 16, 2010  
Second Reading: March 2, 2010  
Public Hearing: May 4, 2010  
Third Reading: May 4, 2010

Addition to Exhibit A (Oconee County)  
Agreement for Development of Joint County  
Industrial Park dated as of January 16, 2007,  
Amended on November 3, 2008  
and May 4, 2010  
Between Oconee County and Pickens County

**Tract 3      Greenfield Automotive Industries, Inc.**

All that piece, parcel or tract of land situate, lying and being in the County of Oconee, State of South Carolina, located on the Southern side of U.S. Highway 76 and 123 and being more particularly shown and designated as a tract of land containing 78.20 acres, more or less, on a plat entitled "Plat of a Tract of Land Surveyed at the Request of The First National Bank of Boston" by Farmer & Simpson Engineers, dated June 3, 1986 and recorded in the office of the Clerk of Court of Oconee County, South Carolina in Plat Book P-51 at page 132, and being more particularly described, according to said plat as follows:

Beginning at an iron pin (P.O.B.) located on the southwester edge of the right of way for U.S. Highway 76 and 123 and at the northwestern most corner of said tract of land (said corner being a common corner with the northeastern most corner of lands now or formerly of Delta Corporation) and running thence along the southwestern edge of the right of way for U.S. Highway 76 and 123 S 63 degrees - 19' E 1,890.8 feet to an iron pin corner; thence S 22 degrees - 57' W 456.9 feet to an iron pin corner; thence S 02 degrees - 07' E 261.1 feet to a nail and bottle top; thence S 38 degrees - 42' W 243.9 feet to a nail and bottle top located within the right of way for Highway S-439; thence S 32 degrees - 40' W 248.5 feet to a nail and bottle top located in the center of the right of way for Highway S-439; thence S 25 degrees - 27' W 240.3 feet to an iron pin corner; thence N 86 degrees 32' W 249.9 feet to an iron pin corner; thence S 86 degrees-19' W 593.3 feet to an iron pin corner; thence S 09 degrees - 16' W 241.6 feet to an iron pin corner; thence N 78 degrees - 56' W 673.4 feet to an iron pin corner; thence N 05 degrees - 25' W 398.7 feet to an iron pin corner; thence N 09 degrees - 32' E 798.4 feet to an iron pin corner; thence N 23 degrees - 02' W 365.0 feet to an iron pin corner; thence N 75 degrees - 09' E 132.3 feet to an iron pin corner; thence N 24 degrees - 28' E 796.4 feet to the POINT OF BEGINNING. Said tract of land is bounded on the North by the right of way for U.S. Highway 76 and 123, on the East by lands of various owners, on the South by lands now or formerly of Clemson University and U.S. Government Hartwell Reservoir and on the West by lands now or formerly of U.S. Government Hartwell Reservoir and Delta Corporation.

LESS AND EXCEPT all that certain piece, parcel or tract of land conveyed from Greenfield Industries, Inc., predecessor in interest of Grantor herein, by deed dated December 22, 2003, and recorded on December 31, 2003, in the Office of the Register of Deeds of Oconee County, South Carolina in Book 1302, page 345.

LESS AND EXCEPT all that certain piece, parcel or tract of land conveyed from Greenfield Industries, Inc., predecessor in interest of Grantor herein, by deed dated March 4, 1996 and recorded on April 10, 1996 in the Office of the Register of Deeds of Oconee County, South Carolina in Book 857, page 305.

BEING commonly referred to as 2501 Davis Creek Road, Seneca, Oconee County, South Carolina and as Tax Map/Parcel Numbers 226-00-04-006 and 226-00-04-020.





STATE OF SOUTH CAROLINA    )  
   )  
 COUNTY OF OCONEE            )  
 COUNTY OF PICKENS          )    SECOND AMENDMENT OF AGREEMENT  
   )    FOR DEVELOPMENT OF JOINT COUNTY  
   )    INDUSTRIAL/BUSINESS PARK

THIS AGREEMENT for the second amendment of an agreement for the development of a joint county industrial/business park located both within Oconee County, South Carolina and Pickens County, South Carolina, such original agreement dated as of January 16, 2007, and subsequently amended on November 3, 2008, by and between the County of Oconee and the County of Pickens both political subdivisions of the State of South Carolina (the "Agreement"), is made and entered into as of this 4th day of May, 2010 by and between the parties hereto (the "Second Amendment to Agreement").

**RECITALS**

WHEREAS, pursuant to the Agreement, Oconee County, South Carolina ("Oconee County"), and Pickens County, South Carolina ("Pickens County") in order to promote economic development and thus provide additional employment opportunities within both of said counties, have established in Oconee County and Pickens County a Joint County Industrial and Business Park (the "Park"); and

WHEREAS, as a consequence of the establishment of the Park, property therein is exempt from ad valorem taxation, but the owners or lessees of such property are required to pay annual fees in an amount equal to that amount for which such owner or lessee would be liable except for such exemption; and

WHEREAS, pursuant to the Agreement, Oconee County and Pickens County have agreed to accept responsibility for the costs of infrastructure, maintenance, management, promotional costs, and other appropriate costs associated with the establishment and operation of the Park; and

WHEREAS, Oconee County and Pickens County desire to amend the Agreement, as previously amended, as more specifically provided below;

NOW, THEREFORE, in consideration of the mutual agreement, representations and benefits contained in this Second Amendment to Agreement and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1.     **Binding Agreement.** This Second Amendment to Agreement serves as a written instrument amending the entire Agreement between the parties, as previously amended, and shall be binding on Oconee County and Pickens County, their successors and assigns.
  
2.     **Authorization.** Article VIII, Section 13(d), of the Constitution of South Carolina (the "Constitution") provides that counties may jointly develop an industrial or business park with other counties within the geographical boundaries of one or more of the member counties, provided that certain conditions specified therein are met and further provided that the

General Assembly of the State of South Carolina provides by law a means by which the value of property in such park will be considered for purposes of bonded indebtedness of political subdivisions and school districts and for purposes of computing the index of taxpaying ability for school districts. Section 4-1-170, Code of Laws of South Carolina, 1976, as amended ("Section 4-1-170"), satisfies the conditions imposed by Article VIII, Section 13(d), of the Constitution and provides the statutory vehicle whereby a joint county industrial park may be created.

3. **Second Amendment to the Agreement.** As of the date of this Second Amendment to the Agreement, the First Amendment to the Agreement and the Agreement as previously amended are further amended, in accordance with Section 3(B) of the Agreement, so to expand the Park premises in Oconee County by the addition of one (1) tract of land, to be shown as "Tract 3" on the revised Exhibit A, attached hereto, which shall amend, replace, and supersede the previously amended Exhibit A to the Agreement which was in effect prior to execution of this Second Amendment to Agreement.

4. **Severability.** In the event and to the extent (and only to the extent) that any provision or any part of a provision of this Second Amendment to Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision or part of a provision of this Second Amendment to the Agreement.

5. **Termination.** All other terms and conditions of the Agreement as amended by this Second Amendment to the Agreement, and as previously amended, shall remain in full force and effect.

WITNESS our hands and seals of this 4th day of May 2010.

OCONEE COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Reginald T. Dexter, Chairman of County Council  
Oconee County, South Carolina

By: \_\_\_\_\_  
Elizabeth G. Hulse, Clerk to County Council  
Oconee County, South Carolina

WITNESS our hands and seals as of this 15<sup>th</sup> day of March, 2010.

PICKENS COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
G. Neil Smith, Chairman of County Council  
Pickens County, South Carolina

ATTEST:

By: \_\_\_\_\_  
Donna Owens, Clerk, County Council  
Pickens County, South Carolina

**EXHIBIT A  
LAND DESCRIPTION  
OCONEE COUNTY**

**TRACT 1**

Timken US Corporation  
430 Torrington Road  
Walhalla, South Carolina 29691

All that certain piece, parcel or tract of land situate, lying and being in West Union School District, Oconee County, South Carolina, containing 103.45 acres, more or less, as will appear by plat thereof prepared by Schumacher Engineering Services, Dated September 23, 1966, revised November 9, 1966 and February 20, 1967, recorded in Plat Book P-29, page 132 in the office of the Clerk of Court for Oconee County, South Carolina. BEGINNING at a point in the center of Road S 37-324, thence S 75-13 E 34.7 feet to an iron pin corner, old; thence S 75-13 E 1464.6 feet to an iron pin corner, old; thence S 18-16 W 1418.89 feet to an iron pin corner, new; thence N 73-32 W 811.15 feet to an iron pin corner, old; thence S 05-28 W 481 feet to an iron pin corner, old; thence N 74-34 W 1248.93 feet to an iron pin corner, new; thence N 15-32 E 445.85 feet to L.P.O.; thence N 70-08 W 124.93 feet to L.P.O.; thence N 15-20 E 1604.90 feet to L.P.O.; thence N 74-38 W 1050.31 to a stone corner, old; thence N09-41 W 237.32 feet to L.P.O.; thence N 76-47 E 1351.79 feet to a nail in the center of bituminous road, designated Point "B"; thence S 26-42 E 474.8 feet along center of road to a nail; thence S 23-51 E 276.8 feet along center of road to a nail; thence S 16-07 E 264.8 feet along center of road to a nail; thence S 09-20 E 222.8 feet along center of road to point designated Point "A"; same being the point of beginning. Said tract being the major portion of a tract of land conveyed to the Torrington Company (Maine) by Piedmont-Oconee Corp. by deed dated June 17, 1960, recorded in Deed Book 8-F, page 8, and the property conveyed by deed of Leroy C. Martin and Raleigh L. Martin to the Torrington Company (Maine) dated January 25, 1967, recorded in Deed Book 10-B at page 35, which said conveyance was made to make the center line of road the property line and by deed of James Robert LeCroy to the Torrington Company (Maine) dated February 14, 1967, recorded in Deed Book 10-B, page 34 which deed was made to make the center line of road the line; less a strip of land conveyed by The Torrington Company (Maine) to James Robert LeCroy by deed dated July 25, 1967, recorded in Deed Book 10-E, page 87, which deed was made for the purpose of making the center line of the road the property line.

**TRACT 2**

BorgWarner Torqtransfer Systems Inc.

All that certain piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Oconee, Township of Seneca, containing 78.176 acres, more or less and shown and more fully described by metes and bounds on plat of survey thereof made by R. Jay Cooper, P.E. & L.S. dated April 6, 1990, which plat is recorded in the Office of the Clerk of Court for Oconee County in Plat Book A-54, pages 9 and 10 and which is incorporated herein by reference.



The within described property was conveyed to Borg-Warner Powertrain Systems Corporation by deed of Emhart Industries, Inc. dated September 26, 1995 and recorded in the Office of the Clerk of Court for Oconee County in Deed Book 834 at page 313 on November 5, 1995.

### **TRACT 3**

Greenfield Automotive Industries, Inc.

All that piece, parcel or tract of land situate, lying and being in the County of Oconee, State of South Carolina, located on the Southern side of U.S. Highway 76 and 123 and being more particularly shown and designated as a tract of land containing 78.20 acres, more or less, on a plat entitled "Plat of a Tract of Land Surveyed at the Request of The First National Bank of Boston" by Farmer & Simpson Engineers, dated June 3, 1986 and recorded in the office of the Clerk of Court of Oconee County, South Carolina in Plat Book P-51 at page 132, and being more particularly described, according to said plat as follows:

Beginning at an iron pin (P.O.B.) located on the southwester edge of the right of way for U.S. Highway 76 and 123 and at the northwestern most corner of said tract of land (said corner being a common corner with the northeastern most corner of lands now or formerly of Delta Corporation) and running thence along the southwestern edge of the right of way for U.S. Highway 76 and 123 S 63 degrees - 19' E 1,890.8 feet to an iron pin corner; thence S 22 degrees - 57' W 456.9 feet to an iron pin corner; thence S 02 degrees - 07' E 261.1 feet to a nail and bottle top; thence S 38 degrees - 42' W 243.9 feet to a nail and bottle top located within the right of way for Highway S-439; thence S 32 degrees - 40' W 248.5 feet to a nail and bottle top located in the center of the right of way for Highway S-439; thence S 25 degrees - 27' W 240.3 feet to an iron pin corner; thence N 86 degrees 32' W 249.9 feet to an iron pin corner; thence S 86 degrees-19' W 593.3 feet to an iron pin corner; thence S 09 degrees - 16' W 241.6 feet to an iron pin corner; thence N 78 degrees - 56' W 673.4 feet to an iron pin corner; thence N 05 degrees - 25' W 398.7 feet to an iron pin corner; thence N 09 degrees - 32' E 798.4 feet to an iron pin corner; thence N 23 degrees - 02' W 365.0 feet to an iron pin corner; thence N 75 degrees - 09' E 132.3 feet to an iron pin corner; thence N 24 degrees - 28' E 796.4 feet to the POINT OF BEGINNING. Said tract of land is bounded on the North by the right of way for U.S. Highway 76 and 123, on the East by lands of various owners, on the South by lands now or formerly of Clemson University and U.S. Government Hartwell Reservoir and on the West by lands now or formerly of U.S. Government Hartwell Reservoir and Delta Corporation.

LESS AND EXCEPT all that certain piece, parcel or tract of land conveyed from Greenfield Industries, Inc., predecessor in interest of Grantor herein, by deed dated December 22, 2003, and recorded on December 31, 2003, in the Office of the Register of Deeds of Oconee County, South Carolina in Book 1302, page 345.

LESS AND EXCEPT all that certain piece, parcel or tract of land conveyed from Greenfield Industries, Inc., predecessor in interest of Grantor herein, by deed dated March 4, 1996 and recorded on April 10, 1996 in the Office of the Register of Deeds of Oconee County, South Carolina in Book 857, page 305.

BEING commonly referred to as 2501 Davis Creek Road, Seneca, Oconee County, South Carolina and as Tax Map/Parcel Numbers 226-00-04-006 and 226-00-04-020.

**EXHIBIT B  
LAND DESCRIPTION  
PICKENS COUNTY**



## NOTICE OF PUBLIC HEARING

There will be a public hearing on an ordinance with respect to the approval by Oconee County, South Carolina of the Second Amendment of the Joint County Industrial and Business Park Agreement between Oconee County, South Carolina and Pickens County, South Carolina. The property to be included in the Industrial Business Park includes Greenfield Automotive Industries, Inc. which is located at 2501 Davis Creek Road Seneca, South Carolina 29678. Said public hearing is to occur at a meeting of the Oconee County Council in the Administration Building, 415 South Pine Street, Walhalla, South Carolina on Tuesday, May 4, 2010 at 7:00 p.m.

OCONEE COUNTY, SOUTH CAROLINA

Reginald T. Dexter  
Chairman of County Council





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**STATE OF SOUTH CAROLINA  
OCONEE COUNTY  
ORDINANCE NO. 2010-05**

AUTHORIZING AND PROVIDING FOR THE ISSUANCE OF SPECIAL SOURCE REVENUE BONDS OF OCONEE COUNTY, SOUTH CAROLINA; PRESCRIBING THE FORM OF BONDS; LIMITING THE PAYMENT OF THE BONDS SOLELY TO THE PLEDGED REVENUES RECEIVED AND RETAINED BY THE COUNTY FROM THE PAYMENT OF FEES IN LIEU OF TAXES FROM CERTAIN JOINT COUNTY INDUSTRIAL AND BUSINESS PARKS AND PLEDGING THE PLEDGED REVENUES TO SUCH PAYMENT; CREATING CERTAIN FUNDS AND PROVIDING FOR PAYMENTS INTO SUCH FUNDS; AND MAKING OTHER COVENANTS AND AGREEMENTS IN CONNECTION WITH THE FOREGOING.

Enacted: May 4, 2010

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## TABLE OF CONTENTS

(This Table of Contents for this Ordinance is for convenience of reference only and is not intended to define, limit or describe the scope or intent of any provision of this Ordinance).

	<u>Page</u>
<b>ARTICLE I DEFINITIONS</b>	
Definitions .....	1
<b>ARTICLE II FINDINGS AND DETERMINATIONS</b>	
Section 2.1. Findings and Determinations .....	9
<b>ARTICLE III AUTHORIZATION AND ISSUANCE OF BONDS</b>	
Section 3.1. Authorization of Bonds .....	11
Section 3.2. General Provisions for Issuance of Bonds .....	11
Section 3.3. Conditions for the Issuance of Bonds under this Ordinance other than Refunding Bonds .....	12
Section 3.4. Refunding Bonds .....	13
Section 3.5. Junior Bonds .....	13
<b>ARTICLE IV THE BONDS</b>	
Section 4.1. Execution .....	14
Section 4.2. Authentication .....	14
Section 4.3. Registration and Transfer of Bonds; Persons Treated as Holders .....	14
Section 4.4. Form of Bonds; Denominations; Medium of Payment .....	15
Section 4.5. Numbers, Date, and Payment Provisions .....	15
Section 4.6. Exchange of Bonds .....	16
Section 4.7. Regulations with Respect to Exchanges and Transfer .....	16
Section 4.8. Temporary Bonds .....	16
Section 4.9. Mutilated, Lost, Stolen or Destroyed Bonds .....	17

ARTICLE V  
REDEMPTION OF BONDS

Section 5.1.	Redemption of Bonds .....	18
Section 5.2.	Selection of Bonds for Redemption.....	18
Section 5.3.	Notice of Redemption .....	18
Section 5.4.	Partial Redemption of Bond.....	19
Section 5.5.	Effect of Redemption.....	19
Section 5.6.	Cancellation .....	19

ARTICLE VI  
ESTABLISHMENT OF FUNDS;  
SECURITY FOR AND PAYMENT OF THE BONDS;  
INVESTMENT OF MONEYS

Section 6.1.	Listing of Funds and Accounts .....	20
Section 6.2.	Disposition of Pledged Revenues .....	20
Section 6.3.	Security for and Payment of the Bonds .....	21
Section 6.4.	Accounting Methods.....	22
Section 6.5.	Revenue Fund .....	22
Section 6.6.	Debt Service Funds.....	22
Section 6.7.	Debt Service Reserve Funds .....	24
Section 6.8.	Distribution of Remaining Balance .....	26
Section 6.9.	Establishment of Construction Fund.....	26
Section 6.10.	Investment of Funds.....	27

ARTICLE VII  
COVENANTS

Section 7.1.	To Pay Principal, Premium, and Interest on the Bonds .....	28
Section 7.2.	Joint County Industrial and Business Parks.....	28
Section 7.3.	Records, Accounts and Audits.....	28
Section 7.4.	Other Obligations and Special Source Credits.....	28

ARTICLE VIII  
TRUSTEE; RESIGNATION OF TRUSTEE; LIABILITY OF  
TRUSTEE FOR INVESTMENTS; CUSTODIANS

Section 8.1.	Trustee.....	29
Section 8.2.	Resignation of Trustee.....	32
Section 8.3.	Removal of Trustee.....	32
Section 8.4.	Successor Trustee.....	32
Section 8.5.	Custodians.....	33

ARTICLE IX  
AMENDMENTS OR SUPPLEMENTS TO THIS ORDINANCE

Section 9.1. Amendments or Supplements to this Ordinance.....34

ARTICLE X  
EVENTS OF DEFAULT

Section 10.1. Events of Default .....36

ARTICLE XI  
REMEDIES UPON EVENT OF DEFAULT

Section 11.1. Declaration of Principal and Interest as Due .....37  
Section 11.2. Suits at Law or in Equity and Mandamus .....37  
Section 11.3. Remedies Not Exclusive; Effect of Waiver of Default; Effect of  
Abandonment of Proceedings or Adverse Determination .....38  
Section 11.4. Restrictions on Bondholder's Action.....38  
Section 11.5. Application of Revenues and Other Moneys After Default.....39

ARTICLE XII  
DEFEASANCE

Section 12.1. Defeasance .....41

ARTICLE XIII  
MISCELLANEOUS

Section 13.1. Benefits of Ordinance Limited to the County, the Trustee and Holders  
of the Bonds .....43  
Section 13.2. Ordinance Binding Upon Successors or Assigns of the County.....43  
Section 13.3. No Personal Liability .....43  
Section 13.4. Effect of Saturdays, Sundays and Legal Holidays.....43  
Section 13.5. Partial Invalidity.....44  
Section 13.6. Law and Place of Enforcement of this Ordinance .....44  
Section 13.7. Effect of Article and Section Headings and Table of Contents .....44  
Section 13.8. Amendment to Multi-County Park Ordinances; Distribution of  
Highpointe/PointeWest Park Fee Payments; Repeal of  
Inconsistent Ordinances and Resolutions .....44  
Section 13.9. Effectiveness of this Ordinance .....45  
Section 13.10. Notices .....45  
Section 13.11. Codification.....45

BE IT ORDAINED BY THE COUNTY COUNCIL OF OCONEE COUNTY, SOUTH CAROLINA, IN COUNCIL ASSEMBLED;

## ARTICLE I

### DEFINITIONS

Section 1.1. Definitions. Unless the context shall clearly indicate some other meaning, the terms defined in this Section shall, for all purposes of this Ordinance and of any ordinance, resolution, certificate, opinion, instrument or other document herein or therein mentioned, have the meanings herein specified. Definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined and vice versa. The term:

“Accountant” shall mean an independent certified public accountant or a firm of independent certified public accountants selected by the County.

“Act” shall mean Sections 4-1-175 and 4-29-68 of the South Carolina Code, and all other statutory authorizations, now or hereinafter enacted, authorizing and enabling the County to provide for the issuance of the Bonds.

“Authorized County Representative” shall mean the person or persons at the time designated to act on behalf of the County for the purpose of performing any act under this Ordinance or any Supplemental Ordinance by a written certificate furnished to the Trustee or a Custodian containing the specimen signature of such person or persons and signed on behalf of the County by the County Administrator.

“Bond” or “Bonds” shall mean any Bond, some of the Bonds or all of the Bonds issued under and pursuant to Article III hereof, including the Series 2010 Bond, excluding Junior Bonds.

“Bond Counsel” shall mean any attorney or firm of attorneys of nationally recognized standing in matters pertaining to the federal tax exemption of interest on obligations issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States.

“Bondholders” or the term “Holders” or any similar term shall mean the registered owner or owners of any Outstanding Bond or Bonds.

“Bond Redemption Account” shall mean the account, if any, by that name created within each respective Debt Service Fund.

“Books of Registry” shall mean the registration books maintained by the Registrar in accordance with Section 4.3 hereof.



"Business Day" shall mean, except as otherwise provided with respect to a Series of Bonds in a Supplemental Ordinance, any day other than a Saturday, a Sunday or a day which shall be in the State or the state in which the principal corporate trust office of the Trustee is located a legal holiday or a day on which banking institutions are authorized by law or executive order to close.

"Construction Fund" shall mean any fund established with and maintained by the Custodian selected by the County and derived from certain of the proceeds of the sale of the Bonds and intended to defray the costs of all or a portion of any Project and to pay Costs of Acquisition and Construction (exclusive of any capitalized interest on Bonds which may be deposited in a Debt Service Fund) in connection therewith, as established in a Supplemental Ordinance authorizing the issuance of any Series of Bonds.

"Costs of Acquisition and Construction" shall mean, to the extent permitted by the Act, all costs (including, but not limited to, architectural and engineering fees) of designing, acquiring, constructing, improving, or expanding one or more Projects, including the Costs of Issuance and capitalized interest on Bonds, sums required to reimburse the County for payments previously made with respect to a Project, and funding of a Debt Service Reserve Fund. Costs of Acquisition and Construction shall include the payment of amounts due on bond anticipation notes, the proceeds of which were used for Costs of Acquisition and Construction.

"Costs of Issuance" shall mean all items of expense, directly or indirectly payable or reimbursable by or to the County and related to the authorization, sale and issuance of a Series of Bonds including, but not limited to, printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of any Trustee, Custodian, Registrar or Paying Agent, legal fees and charges, auditing and accounting fees and charges, fees and disbursements of consultants and professionals, costs of credit ratings, bond insurance or surety bond premiums, fees and charges for preparation, execution, transportation and safekeeping of Bonds, costs and expenses of any refunding, premiums for insurance relating to the issuance of Bonds, financing charges, and any other costs, charges or fees in connection with the original issuance of Bonds.

"Council" shall mean the County Council of the County.

"County" shall mean Oconee County, South Carolina.

"Custodian" shall mean any bank, depository or trust company duly qualified and doing business within the State selected by the County as a depository of moneys or securities held in the Construction Fund. A Supplemental Ordinance may appoint the County Treasurer as Custodian.

"Debt Service" shall mean, with respect to each Series of Bonds and with respect to any particular Fiscal Year, the aggregate of the amounts to be paid or set aside (or estimated to be required to be paid or set aside) in the applicable Debt Service Fund in such Fiscal Year for the payment of the principal of, redemption premium, if any, and interest (to the extent not capitalized or not payable from the proceeds of Bonds or investment earnings thereon) on such Series of Bonds. With respect to Variable Rate Indebtedness then Outstanding, interest thereon shall be calculated at the actual average rate of interest on the Variable Rate Indebtedness during

the twelve (12) months immediately preceding the date of calculation (or such lesser period during which the Variable Rate Indebtedness has been Outstanding); provided, that for purposes of any prospective calculation, interest on Variable Rate Indebtedness shall be calculated at the lesser of (a) the 25-Bond Revenue Index published by *The Bond Buyer* (or if no longer published, any reasonably equivalent nationally recognized index published for the periods in question selected by the County) no more than two weeks prior to the date of calculation or (b) the maximum interest rate allowable on such Variable Rate Indebtedness. In the case of Bonds which have been or shall be issued as taxable obligations, for which the County has or shall be entitled to receive a payment that effectively reduces the County's debt service payment obligation therefor (including but not limited to Build America Bonds ("BABs") issuable pursuant to the authority of the American Recovery and Reinvestment Act of 2009 (the "ARRA")), the amount to be paid or set aside in the applicable Debt Service Fund in each Fiscal Year for such payment of Debt Service shall be reduced by the payment that the County has or shall be entitled to receive for such purpose.

"Debt Service Fund" shall mean the respective funds of that name established pursuant to Section 6.6 of this Ordinance and so designated pursuant to a Supplemental Ordinance to provide for the payment of the principal of and interest on the respective Series of Bonds issued pursuant to this Ordinance as the same respectively become due and payable.

"Debt Service Reserve Fund" shall mean the respective funds, if any, of that name established pursuant to the authorization of Section 6.7 of this Ordinance and so designated pursuant to a Supplemental Ordinance or this Ordinance to provide for the payment of the principal of and interest on the respective Series of Bonds issued pursuant to this Ordinance as the same respectively become due and payable.

"Default" or "Event of Default" shall mean any of those defaults specified in and defined by Section 10.1 hereof.

"Fee Payments" shall mean the payments made by owners or lessees (including payments made by any Person on behalf of such owner or lessee) of any property situated both in the County and in one or more of the Joint County Industrial and Business Parks. As provided in the Park Act, such Fee Payments are to be in an amount equivalent to the property taxes or other in-lieu-of payments that would have been due and payable with respect to such property except for the exemption from *ad valorem* taxation provided for in the Park Act.

"First Supplemental Ordinance" shall mean First Supplemental Ordinance No. 2010-06 enacted by the Council on May 4, 2010, authorizing the issuance of the Series 2010 Bond.

"Fiscal Year" shall mean the fiscal year of the County, initially being the period from July 1 in any year to and including June 30 of the following year.

"Government Obligations" shall mean, except as limited with respect to the funds and accounts relating to a Series of Bonds by a Supplemental Ordinance, any of the following to the extent now or hereafter permitted by the laws of the State:

- (1) cash;

(2) United States Treasury Obligations – State and Local Government Series;

(3) United States Treasury bills, notes, bonds or zero coupon treasury bonds all as traded on the open market;

(4) direct obligations of the U.S. Treasury which have been stripped by the Treasury itself, including CATS, TIGRS and similar securities;

(5) obligations of any agencies or instrumentalities which are backed by the full faith and credit of the United States of America;

(6) bonds or debentures issued by any Federal Home Loan Bank or consolidated bonds or debentures issued by the Federal Home Loan Bank Board;

(7) obligations of the Federal National Mortgage Association; or

(8) any legally permissible combination of any of the foregoing.

Government Obligations must be redeemable only at the option of the holder thereof.

“Highpointe/PointeWest Park” shall mean the Joint County Industrial and Business Park established pursuant to Highpointe/PointeWest Park Agreement.

“Highpointe/PointeWest Park Agreement” shall mean that certain Agreement for Development of Joint County Business Park between the County and Pickens County approved by the County’s Ordinance No. 2010-07.

“Interest Account” shall mean the account by that name created within each respective Debt Service Fund.

“Interest Payment Date” shall mean the respective interest payment dates for a Series of Bonds as determined by a Supplemental Ordinance.

“Joint County Industrial and Business Park” shall mean any present or future joint county industrial and business park established by the County and a Partner County pursuant to (1) a Park Agreement, and (2) the Park Act.

“Junior Bonds” shall mean either (a) bonds or bond anticipation notes secured by a pledge of Pledged Revenues junior and subordinate in all respects to the pledge securing the Bonds, or (b) any other form of indebtedness secured by Pledged Revenues after provision has been made for all payments required to be made with respect to the Bonds, which bonds or indebtedness may be authorized by an ordinance of Council which is not supplemental to this Ordinance.

“Maximum Debt Service” shall mean the highest aggregate principal and interest requirements (to the extent not paid from the proceeds of Bonds or investment earnings thereon) on the Bonds then Outstanding during any then current or future Fiscal Year. In the case of determining the Maximum Debt Service for purposes of Section 3.3 of this Ordinance, interest

on Variable Rate Indebtedness shall be calculated at the lesser of (a) the 25-Bond Revenue Index published by *The Bond Buyer* (or if no longer published, any reasonably equivalent nationally recognized index published for the periods in question selected by the County) no more than two weeks prior to the date of calculation or (b) the maximum interest rate allowable on such Variable Rate Indebtedness. In the case of Bonds which have been or shall be issued as taxable obligations, for which the County has or shall be entitled to receive a payment that effectively reduces the County's debt service payment obligation therefor (including but not limited to BABs issuable pursuant to the authority of the ARRA (as such terms are referred to in the definition of "Debt Service" above)), the highest aggregate principal and interest requirements for such Bonds during any Fiscal Year shall be reduced by the payment that the County has or shall be entitled to receive therefor.

"Moody's" shall mean Moody's Investors Service, Inc., or its successors.

"Multi-County Fees" shall mean the Fee Payments paid by the County to a Partner County (on behalf of properties located in the County) pursuant to the terms of a Park Agreement.

"Multi-County Park Ordinances" shall mean, collectively, all ordinances of the County authorizing the execution and delivery of any Park Agreement between the County and any Partner County in order to establish any Joint County Industrial and Business Park, and any ordinances of the County authorizing any amendments to any such Park Agreements.

"Net Fee Payments" shall mean: (a) with respect to any property located in the Highpointe/PointeWest Park, 100% of the Fee Payments paid by or on behalf of the owners or lessees of any property located in the Joint County Industrial and Business Park established pursuant to the Highpointe/PointeWest Park Agreement and the Multi-County Park Ordinance that approved the same, calculated after payment of any Multi-County Fees due to the Partner County under the terms of the Highpointe/PointeWest Park Agreement; and (b) with respect to any property located in the County and in any Joint County Industrial and Business Park (exclusive of property located in the Highpointe/PointeWest Park), the product of fifteen percent (15%) of the Fee Payments paid by or on behalf of the owners or lessees of such property, calculated prior to the payment of any Other Obligations and Special Source Credits and after payment of any Multi-County Fees due to a Partner County under the terms of the respective Park Agreements.

"Other Obligations" shall mean any special source revenue bonds (excluding Bonds and Junior Bonds issued pursuant to this Ordinance) heretofore or hereafter issued by the County pursuant to the Act and payable from payments made by owners or lessees of any property situated both in the County and in one or more of the Joint County Industrial and Business Parks.

"Outstanding", when used with respect to any Bond, shall have the construction given to such word in Article XII hereof; i.e., a Bond shall not be Outstanding if such Bond is not, or would not be at the time, deemed to be Outstanding by reason of the operation and effect of said Article XII.

"Park Act" shall mean Section 4-1-170 of the South Carolina Code, Article VIII, Section 13 of the Constitution of the State, as amended, and all other statutory or constitutional



authorizations, now or hereinafter enacted, authorizing and enabling the existence of Joint County Industrial and Business Parks.

“Park Agreement” shall mean any current or future agreement for the development of a Joint County Industrial and Business Park between the County and a Partner County, and any and all amendments or supplements thereto, pursuant to the Park Act. As of the date of enactment of this Ordinance, the Park Agreements include:

(1) Agreement for Development for Joint County Industrial Park between the County and Williamsburg County, South Carolina, dated July 25, 1994, as amended from time to time;

(2) Agreement for Development for Joint County Industrial Park between the County and Pickens County, South Carolina, dated May 4, 1998, as amended from time to time;

(3) Agreement for Development for Joint County Industrial Park between the County and Pickens County, South Carolina, dated January 16, 2007, as amended from time to time; and

(4) The Highpointe/PointeWest Park Agreement.

“Park Agreement Revenues” shall mean any revenues or fees received and retained by the County which are paid to the County from a Partner County (on behalf of properties located in such Partner County) pursuant to a Park Agreement. For example, the Park Agreement Revenues with respect to the Highpointe/PointeWest Park Agreement equal 1% of the fee-in-lieu of tax payments paid by owners of properties located in Pickens County which are also located in the Highpointe/PointeWest Park, if any, that the County is entitled to receive from Pickens County under the terms of the Highpointe/PointeWest Park Agreement.

“Partner County” shall mean any other county of the State with which the County has agreed or agrees to create a Joint County Industrial and Business Park pursuant to a Park Agreement and the Park Act.

“Paying Agent” shall mean for each Series of Bonds the respective paying agent or paying agents appointed pursuant to the proceedings authorizing such Bonds.

“Permitted Investments” shall mean, except as limited with respect to the funds and accounts relating to a Series of Bonds by a Supplemental Ordinance, (a) any one or more of the investments now or hereafter permitted by Section 6-5-10 or Section 11-1-60 of the South Carolina Code, and in effect from time to time, or any authorization relating to the investment of funds hereunder; and (b) the South Carolina Pooled Investment Fund or similar State-administered pool investment fund.

“Person” or words importing “persons” means firms, associations, partnerships (including without limitation, general and limited partnerships), joint ventures, societies, estates, trusts, corporations, other legal entities and natural persons.



"Pledged Revenues" shall mean the sum of: (1) the Net Fee Payments; and (2) the Park Agreement Revenues.

"Principal Account" shall mean the account by that name created within each respective Debt Service Fund.

"Principal Payment Date" shall mean the respective principal payment dates for a Series of Bonds as determined by a Supplemental Ordinance.

"Project" or "Projects" shall mean (a) any infrastructure serving the County or a project; (b) improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise; and (c) such other purposes which may now or hereafter be permitted under the Act and for which special source revenue bonds may be issued. A Project may be located outside of the boundaries of a Joint County Industrial and Business Park.

"Record Date" shall mean, with respect to any Series of Bonds, the fifteenth (15th) day (whether or not a Business Day) of the calendar month immediately preceding an Interest Payment Date or such other day as may be provided in the Supplemental Ordinance authorizing the issuance of such Series of Bonds.

"Registrar" shall mean, for each Series of Bonds, the registrar appointed pursuant to the proceedings authorizing such Bonds.

"Reserve Fund Requirement" shall mean, as of the date of calculation, the debt service reserve fund requirement, if any, established pursuant to a Supplemental Ordinance authorizing the issuance of a Series of Bonds.

"Revenue Fund" shall mean the fund of that name established pursuant to Section 6.5 of this Ordinance.

"S&P" shall mean Standard & Poor's Credit Markets Service, a Division of The McGraw-Hill Companies, Inc., or its successors.

"Series" or "Series of Bonds" or "Bonds of Series" shall mean all Bonds designated as being of the same series issued and delivered on original issuance in a simultaneous transaction, and any Bonds thereafter delivered in lieu thereof or in substitution therefor pursuant to this Ordinance.

"Series 2010 Bond" shall mean the \$3,500,000 Oconee County, South Carolina, Special Source Revenue Bond, Series 2010, authorized under this Ordinance and the First Supplemental Ordinance.

"Special Source Credit" shall mean any credit or payment heretofore or hereafter granted by the County against any fee payment pursuant to Section 4-1-175, Section 4-12-30(K)(3), Section 4-29-67(L)(3), or Section 12-44-70 of the South Carolina Code or any successor or similar provision of State law to any entity having property within any Joint County Industrial and Business Park.

“South Carolina Code” shall mean the South Carolina Code of Laws 1976, as amended.

“State” shall mean the State of South Carolina.

“Supplemental Ordinance” shall mean any ordinance enacted by the Council providing for the issuance of a Bond or Bonds hereunder, including the First Supplemental Ordinance, and any ordinance enacted by the Council pursuant to and in compliance with the provisions of Article IX hereof amending or supplementing the provisions of this Ordinance or any Supplemental Ordinance.

“Taxing Districts” shall mean the County and the School District of Oconee County, South Carolina.

“Term Bond” shall mean any Bond designated by the Supplemental Ordinance providing for its issuance as being subject to retirement or redemption from moneys credited to the applicable Bond Redemption Account as sinking fund installments.

“Trustee” shall mean U.S. Bank National Association, and any successor Trustee appointed in accordance with Article VIII hereof.

“Variable Rate Indebtedness” shall mean indebtedness in the form of Bonds, the interest rate on which is not established at a fixed or constant rate at the time such indebtedness is incurred.

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## ARTICLE II

### FINDINGS AND DETERMINATIONS

Section 2.1. Findings and Determinations. The Council hereby finds and determines:

A. The County is a political subdivision of the State of South Carolina and as such has all powers granted to counties by the Constitution and general laws of the State.

B. Article X, Section 14, of the Constitution of the State of South Carolina, 1895, as amended, provides that indebtedness payable solely from a special source, which source does not involve revenues from any tax or license, may be issued by a county upon such terms and conditions as the General Assembly may prescribe by general law.

C. The Act empowers a county that receives and retains revenues pursuant to the Park Act to issue special source revenue bonds secured by and payable from all or a part of such revenues, subject to certain terms and conditions as provided therein, for the purpose of defraying a portion of the cost of designing, acquiring, constructing, improving or expanding infrastructure serving the County or a project, and improved or unimproved real estate used in the operation of a manufacturing or commercial enterprise in order to enhance the economic development of the County and the Costs of Issuance of any Series of Bonds.

D. In *Horry County School District v. Horry County*, 552 S.E.2d 737 (S.C. 2001), the Supreme Court of South Carolina upheld the constitutionality of the Park Act, and held that counties that receive and retain revenues from joint county industrial and business parks created pursuant to the Park Act have the discretionary authority to allocate such revenues to the extent permitted by the Park Act.

E. The County has determined that there is a need to design, acquire, construct, improve and expand infrastructure serving the County or particular projects, from time to time, and improved or unimproved real estate used in the operation of manufacturing or commercial enterprises in order to enhance the economic development of the County.

F. The Bonds are to be issued under and pursuant to the provisions of the Act and the Park Act, and are to be secured by and payable solely from the Pledged Revenues.

G. The County has entered into various Park Agreements with Partner Counties to develop Joint County Industrial and Business Parks, and may continue to do so. Further, the County may continue to designate property located within the County as part of any existing Joint County Industrial and Business Park. Pursuant to the Park Agreements and the Multi County Park Ordinances, the County receives and retains a portion of the Fee Payments paid by owners or lessors of properties physically located within the Joint County Industrial and Business Parks. The County hereby finds and determines that it is proper to utilize such moneys received and retained by the County to finance the Costs of Acquisition and Construction of the Projects and to secure payment of the Bonds provided for hereunder and in any Supplemental Ordinance.

H. The County hereby finds and determines that it is necessary and proper to direct that the following amounts be deposited into the Revenue Fund established herein and be made available to pay for costs of infrastructure for economic development in the County, including payment of Debt Service on Bonds: (a) 100% of the Fee Payments paid by or on behalf of the owners or lessees of property located in the Joint County Industrial and Business Park established pursuant to the Highpointe/PointeWest Park Agreement, calculated after payment of any Multi-County Fees due to the Partner County under the terms of the Highpointe/PointeWest Park Agreement; and (b) with respect to any property located in the County and in any Joint County Industrial and Business Park (exclusive of any property located in the Highpointe/PointeWest Park) the product of fifteen percent (15%) of the Fee Payments paid by or on behalf of owners or lessees of such property, calculated prior to the payment of any Other Obligations and Special Source Credits and after payment of any Multi-County Fees due to a Partner County under the terms of the respective Park Agreements.

L. By the enactment of this Ordinance, the County intends to provide for the issuance of the Bonds at the time and on the terms and conditions set forth in this Ordinance and Supplemental Ordinances hereto.

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## ARTICLE III

### AUTHORIZATION AND ISSUANCE OF BONDS

Section 3.1. Authorization of Bonds. There is hereby authorized to be issued Bonds of the County to be designated "Oconee County, South Carolina, Special Source Revenue Bonds" or such other designations as may be provided in the Supplemental Ordinance authorizing such Bonds, which Bonds may be issued pursuant to this Ordinance and in accordance with the terms, conditions and limitations set forth herein; in Series; and in such amounts and from time to time as the County may deem to be necessary or advisable for any corporate purpose of the County for which Bonds may be issued under this Ordinance and the Act.

Section 3.2. General Provisions for Issuance of Bonds.

(a) The Bonds shall be issued in Series by means of Supplemental Ordinances enacted by the Council in accordance with the provisions of this Article and Article IX hereof. Each Supplemental Ordinance shall designate the Bonds provided thereby with an appropriate Series designation and with such further particular designations, if any, as the County deems appropriate. Each Supplemental Ordinance shall, unless or except as is otherwise set forth herein, also specify: (i) the authorized principal amount and designation of such Series of Bonds; (ii) the purpose or purposes for which the Bonds of such Series are being issued, which shall be one or more of the purposes set forth in Sections 3.3 or 3.4 hereof; (iii) if the Bonds of the Series are being issued for a purpose specified in Section 3.3 hereof, the Project(s) for which such Bonds are being issued; (iv) an estimate of the Costs of Acquisition and Construction for any Project(s), if any, to be financed by such Series of Bonds; (v) the date or dates of the Bonds of the Series; (vi) the maturity date or dates of the Bonds of the Series and the sinking fund installment amounts and due dates for the Term Bonds of the Series, if any; (vii) the interest rate or rates of the Bonds of such Series, or the manner of determining such rate or rates, the initial Interest Payment Date therefor, and the subsequent Interest Payment Dates; (viii) the denominations of (if other than as provided in this Ordinance), and manner of numbering and lettering, the Bonds of such Series; (ix) the redemption premium or premiums, if any, or the redemption price or prices to be paid upon the redemption of the Bonds of such Series, the period or periods, if any, during which such premiums or prices shall be payable, and the terms and conditions, if any, of such redemption; (x) the place or places of payment of the Bonds of the Series and interest thereon, and the Paying Agent and Registrar therefor and any Custodian of the funds and accounts created with respect thereto; (xi) the provisions for the sale or other disposition of the Bonds of the Series and the use, application and investment, if any, of the proceeds of such sale or other disposition, which use, application and investment shall not be inconsistent or in conflict with the provisions hereof; (xii) whether such Series of Bonds will be subject to a Reserve Fund Requirement and the manner of satisfaction of such Reserve Fund Requirement; (xiii) any other provisions which may be required to be inserted therein by other provisions of this Ordinance; and (xiv) any other necessary or desirable provisions not inconsistent or in conflict with the provisions of this Ordinance.



(b) Bonds of a Series may be executed and delivered to the Registrar by the County and authenticated and delivered to the County or, upon its order, upon compliance with Section 3.3 or Section 3.4 hereof.

Bonds issued upon compliance with this Section 3.2 and Section 3.3 or Section 3.4 hereof shall be issued on a parity with the pledge of and lien upon the Pledged Revenues *inter se*, but not with respect to the particular Debt Service Fund or Debt Service Reserve Fund created for the benefit of the Holders of the Bonds of a Series, notwithstanding, that they may be in different form, and bear different dates, interest rates, number, date of issuance or date of execution or are payable at different times. In all such instances, the pledge of Pledged Revenues made hereunder, and the covenants and remedies hereby granted, shall be applicable and available to the Holders of such Bonds.

Section 3.3. Conditions for the Issuance of Bonds under this Ordinance Other than Refunding Bonds.

Any time and from time to time, one or more Series of Bonds (exclusive of refunding Bonds) may be issued for such purposes as may be permitted by the Act upon compliance with the provisions of Section 3.2 hereof and this Section 3.3 in such principal amounts as may be determined by the Council for the purpose of paying all or part of the Costs of Acquisition and Construction of one or more Projects upon compliance with the following conditions:

A. There shall be executed and filed with the Trustee a certificate of an Authorized County Representative stating (i) either (a) that no Default exists in the payment of the principal of, premium, if any, or interest on any Bonds or Junior Bonds, and all mandatory sinking fund redemptions, if any, required to have been made shall have been made, or (b) that the application of the proceeds of sale of the Series of Bonds to be issued as required by the Supplemental Ordinance authorizing their issuance will cure any such Default or permit such redemptions; and (ii) either (a) that to the best of his or her knowledge, the County is not in Default in the performance of any other of its covenants and agreements contained in this Ordinance, or (b) setting forth the circumstances of each such Default known to him or her. No such certificate shall be required in connection with the issuance of the Series 2010 Bond.

B. If a certificate filed pursuant to part (A) of this Section 3.3 should disclose a Default or Defaults hereunder, there shall be filed with the County an opinion of Bond Counsel that, in the case of any Default disclosed in a certificate filed pursuant to part (A) of this Section 3.3, each such Default does not deprive the Bondholders of the security afforded by this Ordinance in any material aspect.

C. For the issuance of Bonds (other than the Series 2010 Bond issued under this Ordinance and the First Supplemental Ordinance) to finance the Costs of Acquisition and Construction, or a portion thereof, of any Project, there shall be delivered a certificate of an Authorized County Representative certifying that the amount of the Pledged Revenues received by the County during the Fiscal Year preceding the issuance of any Series of Bonds is not less than 120% of the Maximum Debt Service on Bonds then Outstanding and the Bonds then proposed to be issued.

D. Such Bonds shall be issued to secure funds to defray the Costs of Acquisition and Construction of a Project, or to refund Junior Bonds, or any notes, bonds, or other obligations issued to finance or to aid in financing the acquisition or construction of a Project.

E. The Supplemental Ordinance may provide for a deposit into the Debt Service Reserve Fund with respect to such Series of Bonds of cash or securities or an insurance policy, surety bond or letter of credit, as provided in Section 6.7 hereof (inclusive of any proceeds of such Series of Bonds to be deposited in the applicable Debt Service Reserve Fund) having an aggregate value not less than the Reserve Fund Requirement, if any, with respect to such Series of Bonds.

Section 3.4. Refunding Bonds. Without complying with the provisions of Section 3.3 hereof except as otherwise provided herein, the County by means of a Supplemental Ordinance enacted in compliance with the provisions of the Act and any other statutory provisions authorizing the issuance of revenue refunding bonds, including advance refunding bonds, may issue hereunder refunding Bonds as follows:

A. Bonds may be issued for the purpose of refunding (including by purchase) at any time within one year prior to maturity or prior to any sinking fund installment due date, the Bonds maturing on such date (or an amount of such Bonds subject to redemption from such sinking fund installments not in excess of the amount of such Bonds required to be redeemed on such due date) for the payment of which sufficient Pledged Revenues are not available. Any Bonds issued for such purpose shall mature (or sinking fund installments therefor shall commence) not earlier than the latest stated maturity of the Bonds not then refunded to be Outstanding after such refunding; or

B. Bonds may be issued at any time for the purpose of refunding (including by purchase) other Bonds, including amounts to pay principal, redemption premium and interest to the date of redemption (or purchase) of the refunded Bonds and the Costs of Issuance and the funding of a Debt Service Reserve Fund thereunder; provided that (i) the aggregate Debt Service on all Bonds to be Outstanding after the issuance of the proposed Series of refunding Bonds shall not be greater than would have been the aggregate Debt Service of all Bonds not then refunded and the Bonds to be refunded; or (ii) the requirements of parts (A), (B), (C) and (E) of Section 3.3 hereof are met with respect to the refunding Series.

Section 3.5. Junior Bonds. The County may at any time issue Junior Bonds in such amount as it may from time to time determine, payable from the Pledged Revenues, provided that such Junior Bonds are issued to secure funds to defray the Costs of Acquisition and Construction or Costs of Issuance for Projects, or to refund Bonds, Junior Bonds, or any notes, bonds, or other evidences of indebtedness issued to finance or to aid in financing the acquisition or construction of the Projects, and provided further that the pledge of and lien on Pledged Revenues securing Junior Bonds shall at all times be subordinate and inferior to the pledges of and lien on Pledged Revenues securing the Bonds.

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ARTICLE IV

THE BONDS

Section 4.1. Execution. Unless or except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, the Bonds shall be executed on behalf of the County by the Chairman of the County Council by his or her manual or facsimile signature and the corporate seal of the County or a facsimile thereof shall be impressed or reproduced thereon and attested by the Clerk to the County Council by his or her manual or facsimile signature.

In case any officer whose signature or facsimile signature shall appear on the Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, as if he had remained in office until delivery.

Section 4.2. Authentication. Unless or except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, upon compliance with the provisions of Sections 3.2, 3.3 or 3.4 hereof, and upon the order of the County, the Registrar shall authenticate Bonds authorized to be issued hereunder. Only such Bonds as shall have endorsed thereon a certificate of authentication, duly executed manually by the Registrar shall be entitled to any right or benefit under this Ordinance. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed by the Registrar, and such executed certificate of the Registrar upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered. The Registrar's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Registrar, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds issued hereunder or on all of the Bonds of a particular Series. The Registrar's certificate of authentication shall be in substantially the following form:

FORM OF REGISTRAR'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within-mentioned Ordinance of Oconee County, South Carolina.

\_\_\_\_\_  
Registrar

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Officer

Section 4.3. Registration and Transfer of Bonds; Persons Treated as Holders. Unless and except as is otherwise set forth in the Supplemental Ordinance providing for the issuance of a Series of Bonds, each Bond shall be fully registered and transferable only upon the registration books (the "Books of Registry") of the County, which shall be kept for that purpose at the office of the Registrar, by the Holder thereof or by his attorney, duly authorized in writing, upon

surrender thereof, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the Holder or his or her duly authorized attorney with such signature guaranteed by a participant in the Securities Transfer Agents in Medallion Program ("STAMP") or similar program. Upon the transfer of any Bond, the County shall issue, subject to the provisions of Section 4.6 hereof, in the name of the transferee, a new Bond or Bonds of the same series and of the same aggregate principal amount, interest rate and maturity as the unpaid principal amount of the surrendered Bond.

Any Bondholder requesting any transfer shall pay any tax or other governmental charge required to be paid with respect thereto. As to any Bond, the person in whose name the same shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal, redemption premium, if any, and interest on any Bond shall be made only to or upon the order of the Bondholder thereof, or his duly authorized attorney, and neither the County nor the Registrar, shall be affected by any notice to the contrary, but such registration may be changed as herein provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

Section 4.4. Form of Bonds; Denominations; Medium of Payment. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing their issuance, the Bonds of each Series: (a) shall be in fully registered form without coupons, provided, such Bonds may be issued in book-entry form; (b) shall be issued in denominations of \$5,000, or any integral multiple thereof, provided that, upon partial redemption of a Bond requiring surrender thereof and the issuance of a new Bond, such new Bond may be in the denomination of the unredeemed balance; and (c) shall be payable with respect to principal, interest, and premium, if any, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts.

Section 4.5. Numbers, Date, and Payment Provisions.

(a) The Bonds shall be numbered and designated in such manner as the County, with the concurrence of the Registrar, shall determine. Each Bond of a Series shall bear interest from the Interest Payment Date immediately preceding the date of its authentication, unless authentication shall be upon an Interest Payment Date, in which case it shall bear interest from its authentication, or unless authentication shall precede the first Interest Payment Date for such Bond, in which case it shall bear interest as otherwise provided in the Supplemental Ordinance authorizing its issuance, provided, however, that if the date of authentication of any Bond of any Series is after a Record Date and before the corresponding Interest Payment Date therefor, such Bond shall bear interest from such succeeding Interest Payment Date; notwithstanding the foregoing, if at the time of authentication of any Bond any interest on such Bond is in default, such Bond shall bear interest from the date to which interest on such Bond has been paid or if no interest has been paid, such Bond shall bear interest from the date of delivery thereof or from its dated date, or as otherwise provided in the Supplemental Ordinance authorizing the issuance of such Bonds.

(b) Except as otherwise provided in a Supplemental Ordinance, the principal of and redemption premium, if any, on the Bonds shall be payable when due in lawful money of the United States of America upon presentation and surrender of such Bonds at the principal office



of the Paying Agent described in the Supplemental Ordinance authorizing the issuance of such Bonds. Except as otherwise provided in a Supplemental Ordinance, payment of interest on Bonds shall be made by check or draft drawn upon the Paying Agent and mailed to the Holder at his or her address as it appears upon the Books of Registry. The Paying Agent shall maintain a record of the amount and date of any payment of principal and/or interest on the Bonds (whether at the maturity date or the redemption date prior to the maturity or upon the maturity thereof by declaration or otherwise).

Section 4.6. Exchange of Bonds. Unless or except as is otherwise provided in the Supplemental Ordinance authorizing their issuance, Bonds, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the Bondholder or his duly authorized attorney with such signature guaranteed by a participant in STAMP or similar program, may, at the option of the Bondholder thereof, and upon payment by such Bondholder of any charges which the Registrar may make as provided in Section 4.7, be exchanged for a principal amount of Bonds of the same Series and maturity of any other authorized denomination equal to the unpaid principal amount of surrendered Bonds.

Section 4.7. Regulations with Respect to Exchanges and Transfer. In all cases in which the privilege of exchanging or transferring Bonds is exercised, the County shall execute and the Registrar shall authenticate and deliver Bonds in accordance with the provisions of this Ordinance or such Supplemental Ordinance authorizing the issuance thereof. All Bonds surrendered in any such exchanges or transfers shall forthwith be canceled by the Registrar. There shall be no charge to the Bondholder for such exchange or transfer of Bonds except that the Registrar may make a charge sufficient to reimburse it for any tax or other governmental charge required to be paid with respect to such exchange or transfer. Neither the County nor the Registrar shall be required (a) to exchange or transfer Bonds (i) from the Record Date to the succeeding Interest Payment Date or (ii) for a period of 15 days following any selection of Bonds to be redeemed or thereafter until after the first publication or mailing of any notice of redemption, or (b) to transfer any Bonds called for redemption.

Section 4.8. Temporary Bonds. Any Series of Bonds may be initially issued in temporary form, exchangeable for definitive Bonds to be delivered as soon as practicable and subject to the agreement of the County and the purchaser thereof. The temporary Bonds may be printed, lithographed or typewritten, shall be of such denominations as may be determined by the County, shall be without coupons, and may contain such reference to any of the provisions of this Ordinance as may be appropriate. Every temporary Bond shall be executed by the County upon the same conditions and in substantially the same manner as the definitive Bonds. If the County issues temporary Bonds, it will execute and furnish definitive Bonds without delay; and thereupon the temporary Bonds shall be surrendered for cancellation at the principal office of the Registrar, and the Registrar shall deliver and exchange for such temporary Bonds an equal, aggregate principal amount of definitive Bonds of like aggregate principal amount and in authorized denominations of the same Series, maturity or maturities and interest rate or rates. Until so exchanged, the temporary Bonds shall be entitled to the same benefits under this Ordinance as definitive Bonds under this Ordinance.

Section 4.9. Mutilated, Lost, Stolen or Destroyed Bonds. In case any Bond shall at any time become mutilated in whole or in part, or be lost, stolen or destroyed, or be so defaced as to impair the value thereof to the Holder, the County shall execute and the Registrar shall



authenticate and deliver at the principal office of the Registrar, or send by registered mail to the Holder thereof at his request, risk and expense a new Bond of the same series, interest rate and maturity and of like tenor and effect in exchange or substitution for and upon the surrender for cancellation of such defaced, mutilated or partly destroyed Bond, or in lieu of or in substitution for such lost, stolen or destroyed Bond. In any such event, the applicant for the issuance of a substitute Bond shall furnish the County and the Registrar (a) evidence or proof satisfactory to the County and the Registrar of the loss, destruction, mutilation, defacement or theft of the original Bond, and (b) of the ownership thereof, and (c) such security and indemnity as may be required by the laws of the State or such greater amount as may be required by the County and the Registrar. Any duplicate Bond issued under the provisions of this Section in exchange and substitution for any defaced, mutilated or partly destroyed Bond or in substitution for any allegedly lost, stolen or wholly destroyed Bond shall be entitled to the identical benefits under this Ordinance or any Supplemental Ordinance as was the original Bond in lieu of which such duplicate Bond is issued, and shall be entitled to equal and proportionate benefits with all the other Bonds of the same series issued hereunder. Neither the County nor the Registrar nor any Paying Agent shall be required to treat both the original Bond and any duplicate Bond as being Outstanding for the purpose of determining the principal amount of Bonds which may be issued hereunder or for the purpose of determining any percentage of Bonds Outstanding hereunder, but both the original and duplicate Bond shall be treated as one and the same. In the event any such mutilated, lost, stolen or destroyed Bond shall have matured, instead of issuing a duplicate Bond the County may pay the same. All expenses necessary for the providing of any duplicate Bond shall be borne by the applicant therefor.

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## ARTICLE V

### REDEMPTION OF BONDS

Section 5.1. Redemption of Bonds. The Bonds of a Series may be subject to redemption prior to their stated maturities upon such terms and conditions and at such dates and redemption price or prices or premium or premiums as shall be set forth in the Supplemental Ordinance providing for the issuance of such Bonds, and upon the further terms and conditions as are hereinafter set forth.

Section 5.2. Selection of Bonds for Redemption. In the event of the redemption at any time of only part of the Bonds of a Series, the Bonds to be redeemed shall be redeemed in such order as is set forth in the Supplemental Ordinance providing for the issuance of such Bonds. Unless otherwise provided by Supplemental Ordinance, if less than all of the Bonds of like maturity of any Series shall be called for prior redemption, the particular Bonds or portions of Bonds to be redeemed shall be selected at random by the Registrar in such manner as the Registrar in its discretion may deem fair and appropriate; provided, however, that the portion of any Bond of a denomination of more than \$5,000 to be redeemed shall be in the principal amount of \$5,000 or an integral multiple thereof, and that, in selecting portions of such Bonds for redemption, the Registrar shall treat each such Bond as representing that number of Bonds of \$5,000 denomination which is obtained by dividing the principal amount of such Bond by \$5,000.

Section 5.3. Notice of Redemption. Unless or except as otherwise provided in the Supplemental Ordinance authorizing their issuance, the provisions of this Section 5.3 apply to each Series of Bonds.

In the event any of the Bonds or portions thereof are called for redemption, the Registrar shall give notice, in the name of the County, of redemption of Bonds by first-class mail, postage prepaid, to the Holder thereof as shown on the Books of Registry of the County not less than 30 days and not more than 60 days prior to the date fixed for the redemption thereof. Such notice of redemption shall state: (a) the title of such Bonds to be redeemed, CUSIP numbers, if any, date of issue, the Series designation (if any) thereof, the redemption date, the place or places of redemption and the redemption price or redemption premium, if any, payable upon such redemption; (b) if less than all such Bonds of a particular Series are to be redeemed, the distinctive number of such Bonds to be redeemed; (c) that the interest on such Bonds designated for redemption in such notice shall cease to accrue from and after such redemption date; and (d) that on such date there will become due and payable on each such Bond the principal amount thereof to be redeemed at the then applicable redemption price or redemption premium, if any, and the interest accrued on such principal amount to the redemption date. Any notice mailed as provided in this Section shall be conclusively presumed to have been duly given, when mailed, whether or not the Holder thereof receives the notice. The notice shall further state that if money for the redemption of all the Bonds being redeemed at that time is held by the Trustee on the redemption date, interest shall cease to accrue on such Bonds on and after the redemption date. The notice may further state that the redemption of the Bonds being called for redemption is conditioned upon the Trustee receiving on or before the redemption date of sufficient money for the redemption thereof.

Section 5.4. Partial Redemption of Bond. In the event that only part of a Bond shall be called for redemption or prepaid, payment of the amount to be redeemed or prepaid shall be made only upon surrender of such Bond to the Registrar. Upon surrender of such Bond, the County shall execute and the Registrar shall authenticate and deliver to the Holder thereof, at the principal office of the Registrar, or send to such Holder by registered mail at his request, risk and expense, a new fully executed Bond or Bonds, of authorized principal sums equal in aggregate principal amount to, and of the same Series, maturity and interest rate as, the unredeemed portion of the Bond surrendered.

Section 5.5. Effect of Redemption. If a Bond is subject by its terms to redemption prior to its stated maturity and has been duly called for redemption and notice of the redemption thereof has been duly given as hereinbefore provided and if moneys for the payment of such Bond at the then applicable redemption price or together with the then applicable redemption premium, if any, and the interest to accrue to the redemption date on such Bond are held for the purpose of such payment by the Trustee for the Series of Bonds of which such Bond is one, then such Bond so called for redemption shall, on the redemption date designated in such notice, become due and payable. Interest on the Bond so called for redemption shall cease to accrue.

Section 5.6. Cancellation. All Bonds which have been redeemed shall be canceled and either maintained or destroyed by the Registrar and shall not be reissued. A counterpart of the certificate of destruction evidencing such destruction shall be furnished by the Registrar to the County upon the request of the County.

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## ARTICLE VI

### ESTABLISHMENT OF FUNDS; SECURITY FOR AND PAYMENT OF THE BONDS; INVESTMENT OF MONEYS

Section 6.1. Listing of Funds and Accounts. The following are the funds and accounts created and established by this Ordinance:

- (i) Revenue Fund to be held by the County or a bank or other financial institution designated from time to time by the County.
- (ii) Debt Service Fund for each Series of Bonds to be held by the Trustee, including, except as provided in a Supplemental Ordinance, an Interest Account, a Principal Account and a Bond Redemption Account.
- (iii) Debt Service Reserve Fund for each Series of Bonds, if any, to be held by the Trustee.
- (iv) Construction Fund for each Series of Bonds, if any, to be held by a Custodian designated by the County.

One or more accounts may, by direction of the County or by the terms of a Supplemental Ordinance, be established within any of the above funds. It is intended by this Ordinance that the funds and accounts referred to in this Article (other than the Construction Fund) shall remain in existence for so long a time as any sum remains due and payable by way of principal of and interest on the Bonds, and that deposits and withdrawals therefrom be made in the manner herein prescribed and in the order of priority hereinafter set forth in Section 6.2 hereof. Upon the issuance of any Junior Bonds, the Trustee shall then establish in a Supplemental Ordinance a Junior Bond Debt Service Fund. Any debt service due on Junior Bonds shall be paid after all payments have been made with respect to the Debt Service Fund and Debt Service Reserve Fund.

Section 6.2. Disposition of Pledged Revenues. So long as any Bonds are Outstanding, the Pledged Revenues shall be applied at the times, in the amounts and for the purposes as provided or permitted by this Ordinance, and in the following order of priority:

First, provision shall be made for the payment of the principal of and interest on any Bonds then Outstanding, and there shall be transferred into the respective Debt Service Funds the amounts required by this Ordinance or any Supplemental Ordinance;

Second, there shall be transferred into the respective Debt Service Reserve Funds, if established, the amounts (including any payments required under the terms of any surety bond, insurance policy or letter of credit applicable thereto) required by this Ordinance or any Supplemental Ordinance for any Bond issued hereunder or thereunder;

Third, provision shall be made for payment of interest on amounts advanced by the provider of any surety bond, line of credit, insurance policy or letter of credit as contemplated in Section 6.7 hereof;

Fourth, provision shall be made for the payment of any Junior Bonds;

Fifth, the remaining balance shall be transferred to the Treasurer of the County for further distribution to the Taxing Districts.

Section 6.3. Security for and Payment of the Bonds. Each Series of Bonds, together with the interest thereon, shall be payable solely from and secured equally and ratably by a pledge of the Pledged Revenues which shall be and hereby are irrevocably pledged to the payment of the principal of, redemption premium, if any, and interest on the Series of Bonds authorized by the Supplemental Ordinances; provided, however, that Junior Bonds shall be secured solely as provided in Section 3.5 hereto. Each Series of Bonds shall be further secured by the proceeds of such Series of Bonds deposited into the Construction Fund established to defray the Costs of Acquisition and Construction. A Series of Bonds issued to finance the acquisition of real or personal property may be additionally secured by a mortgage of that real or personal property, as specified in the Supplemental Ordinance.

To the extent that *ad valorem* taxes, prior to the conversion to Fee Payments pursuant to a Park Agreement, have been pledged to secure general obligation indebtedness of a political subdivision (which has taxing power within the applicable Joint County Industrial and Business Park) prior to the establishment of such Joint County Industrial and Business Park, such Fee Payments attributable to any real property and improvements thereon existing prior to the date of the Park Agreement shall first be applied, to the extent necessary, to the payment of such outstanding general obligation indebtedness.

To the extent such Fee Payments, prior to the date of enactment of this Ordinance, have been pledged or are hereafter pledged to the payment of Other Obligations or applied to any Special Source Credit, such Fee Payments shall first be applied, to the extent necessary, to the payment of such Other Obligations or applied to any Special Source Credit.

The Bonds, and the interest thereon are, (a) payable solely from all of the Pledged Revenues; (b) not secured by, or in any way entitled to, a pledge of the full faith, credit, or taxing power of the County; (c) not an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation but are payable solely from a special source that does not include revenues from any tax or license; and (d) not a pecuniary liability of the County or a charge against the County's general credit or taxing power.

All funds held by the Trustee in the respective Debt Service Funds and Debt Service Reserve Funds are hereby pledged for the benefit of the respective Bondholders as security for the Bonds of the Series to which such funds relate. The Pledged Revenues shall be and hereby



are irrevocably pledged to the payment of the principal of, redemption premium, if any, and interest on the Bonds. This provision of this Section 6.3 shall not preclude the issuance of Junior Bonds if such Junior Bonds be issued in conformity with the provisions of Section 3.5 hereof, but the pledge herein made shall preclude the issuance of bonds payable from or secured by a pledge of or lien on the Pledged Revenues superior to that herein made to secure the Bonds.

The covenants and agreements herein set forth to be performed by the County shall be for the equal and proportionate benefit, security and protection of all Holders of the Bonds without preference, priority or distinction as to payment or security or otherwise (except as to maturity) of any of the Bonds for any reason or cause whatsoever, except as expressly provided by the pledging of Pledged Revenues herein or by Supplemental Ordinance for each of such series of Bonds. Except as aforesaid, all Bonds shall rank pari passu and shall be secured equally and ratably hereunder without discrimination or preference whatsoever.

Section 6.4. Accounting Methods. The designation of the Revenue Fund in and by this Ordinance shall not be construed to require the establishment of any completely independent, self-balancing funds as such term is commonly defined and used in governmental accounting, but rather is intended solely to constitute an earmarking of the Pledged Revenues for certain purposes and to establish certain priorities for application of such Pledged Revenues as herein provided.

The cash required to be accounted for in each of the foregoing funds established herein may be deposited in a single bank account, provided that adequate accounting records are maintained to reflect and control the restricted allocation of the cash in and deposited therein for the various purposes of such funds as provided herein.

Section 6.5. Revenue Fund. There is hereby established a Revenue Fund to be maintained in trust by the County in a bank or other financial institution designated, from time to time, by the County and into which shall be deposited all Pledged Revenues. Moneys in the Revenue Fund shall be used only in the manner specified in this Article VI and in the order of priority set forth in Section 6.2 hereof. Moneys held in the Revenue Fund may be invested, from time to time, in Permitted Investments; provided, however, that such Pledged Revenues in the Revenue Fund shall be made available to the Trustee on the fifth (5<sup>th</sup>) Business Day prior to each Interest Payment Date in amounts sufficient to make all transfers required to be made from the Revenue Fund by this Article VI and each Supplemental Ordinance.

Section 6.6. Debt Service Funds. There shall be established and maintained special funds of the County to be designated the Debt Service Fund for each Series of Bonds then Outstanding which shall be kept on deposit with the Trustee, and withdrawals therefrom shall be made for the purposes provided in this Ordinance or any Supplemental Ordinance. Each Debt Service Fund shall bear a separate series designation as may be necessary to distinguish such Debt Service Fund.

The respective Debt Service Funds are intended to provide for the payment of the principal of, redemption premium, if any, and interest on each Series of Bonds as the same respectively fall due. Payments into such funds shall be made in the manner prescribed by this Ordinance, and all moneys in the respective Debt Service Funds shall be used solely to pay the principal of, redemption premium, if any, and interest on the respective Series of Bonds, and for

no other purpose, and withdrawals therefrom shall be made only to effect payment of the principal of, redemption premium, if any, and interest on the respective Series of Bonds. Earnings on investments in the Debt Service Funds, including the accounts therein, shall be added to and become a part of such respective funds and the accounts therein.

There may be established in the respective Debt Service Funds from time to time a capitalized interest account to provide for the payment of interest on the Bonds of a particular Series as may be permitted hereunder. Any such account shall be created by a Supplemental Ordinance relating to the issuance of the Bonds of such Series. Any earnings from the investment of funds in the capitalized interest account not required to pay interest on the Bonds of any Series during the period for which interest on the Bonds of such Series is capitalized may be deposited in the Construction Fund created by the Supplemental Ordinance relating to such Bonds or, if such Construction Fund has been terminated or no such fund was created, such earnings shall be retained in the appropriate Debt Service Fund.

Unless and except as is otherwise set forth in a Supplemental Ordinance, not later than the fifth (5<sup>th</sup>) Business Day prior to each Interest Payment Date or Principal Payment Date, as the case may be, the County shall transfer or cause to be transferred to the Trustee from the Revenue Fund for deposit into the respective Debt Service Funds and ratably with respect to separate Series of Bonds for credit to the Interest Account, the Principal Account or the Bond Redemption Account, as the case may be, sufficient moneys so as to comply with the following provisions for the payment of the Bonds then Outstanding.

(a) There shall be established and maintained, for the purpose of paying the interest on the respective Series of Bonds as the same becomes due and payable, an Interest Account in the respective Debt Service Funds. In making any of the deposits to the Interest Account required by this paragraph (a), consideration shall be given to and allowance made for accrued interest received upon delivery of each Series of Bonds to the initial purchasers and for any other credits (including but not limited to capitalized interest with respect to each Series of Bonds) otherwise made to such Interest Account.

(b) There shall be established and maintained, for the purpose of paying the principal of the respective Series of Bonds as they mature, a Principal Account in the respective Debt Service Funds. In making any of the deposits to the Principal Account required by this paragraph (b), consideration shall be given to and allowance made for any other credits otherwise made to such Principal Account.

(c) There shall be established and maintained, in order to meet the specified sinking fund installment requirements of Term Bonds and to otherwise retire Term Bonds prior to maturity, a Bond Redemption Account in the respective Debt Service Fund. The Trustee shall apply the moneys credited to the Bond Redemption Account as sinking fund installments to the retirement of the Term Bonds of each respective Series by redemption in accordance with the Supplemental Ordinance providing for the issuance of such Series of Bonds, without further authorization or direction, on each date upon which a sinking fund installment is due with respect to the Term Bonds of such Series. The Trustee shall keep and retain accurate records of application of each deposit of funds under this paragraph (c). The Trustee shall give notice of all such redemptions in the name and on the behalf of the County in accordance with the provisions of Article V hereof. In making any of the deposits to the Bond Redemption Account required by this paragraph (c), consideration shall be given to and allowance made for any other credits otherwise made to such Bond Redemption Account.

(d) If, on the dates when the payments required by paragraphs (a), (b) and (c) of this Section are to be made, the aggregate of (i) the payments actually made pursuant to said paragraphs (a), (b) and (c), and (ii) the remaining payments to be made prior to the next succeeding date on which principal or interest, or both, as the case may be, will be due and payable, are less than the sum required to be transferred to a Debt Service Fund to effect the payment of the succeeding installment of principal or interest, or both, as the case may be, moneys in the applicable Debt Service Reserve Fund, if any, equal to such deficiency shall be added to the payment to be made pursuant to said paragraphs (a), (b) and (c).

Moneys in the respective Debt Service Funds shall be used and applied solely to the payment of the interest on and the retirement of the principal of and redemption premium, if any, on the respective Series of Bonds and shall be used and applied in accordance with the provisions of this Section 6.6 and this Ordinance. The moneys paid into the respective Debt Service Fund shall be held by the Trustee in trust solely for the purpose of paying the interest on and the retirement of the principal of and redemption premium, if any, on the respective Series of Bonds. Withdrawals from such funds shall be made by the Trustee in order to transfer such moneys to the Paying Agent for the respective Series of Bonds. Such withdrawals shall be made so that the necessary moneys shall be available to the Paying Agent not later than one Business Day prior to the day on which principal or interest or both, and redemption premium, if any, as the case may be, are payable on the Bonds.

Section 6.7. Debt Service Reserve Funds. A Supplemental Ordinance may provide for the establishment of a Debt Service Reserve Fund for any Series of Bonds. Each Debt Service Reserve Fund shall bear a separate Series designation as may be necessary to distinguish such Debt Service Reserve Fund and shall, subject to certain provisions of this Ordinance, be maintained in an amount equal to the applicable Reserve Fund Requirement, as determined pursuant to a Supplemental Ordinance, and in the manner determined pursuant to such Supplemental Ordinance, so long as the applicable Series of Bonds shall be Outstanding. Each such fund is intended to insure the timely payment of the principal of and interest on the applicable Series of Bonds and to provide for the redemption of such Series of Bonds prior to their stated maturities. The respective Debt Service Reserve Funds shall be kept on deposit with the Trustee, and withdrawals therefrom shall be made for the purposes provided in this Ordinance.

Moneys in each Debt Service Reserve Fund shall be used for the following purposes and for no other:

- (a) To prevent a Default in the payment of the principal of or interest on the applicable Series of Bonds, by reason of the fact that moneys in the applicable Debt Service Fund are insufficient for such purposes;
- (b) To pay the principal of, interest on, and redemption premium, if any, of the applicable Series of Bonds in the event that all Outstanding Bonds of such Series be redeemed as a whole;
- (c) To effect a partial redemption of the applicable Series of Bonds, provided that such redemption be undertaken in accordance with the provisions of this Ordinance permitting a partial redemption of the applicable Series of Bonds and the balance remaining in the applicable Debt Service Reserve Fund following such partial redemption shall not be less than the Reserve Fund Requirement; and
- (d) To effect the retirement of a Series of Bonds through purchase under the conditions herein prescribed.

Whenever the value (determined as of the valuation date and in accordance with the method specified in Section 6.10 hereof) of the cash and securities in the applicable Debt Service Reserve Fund shall exceed the Reserve Fund Requirement, such excess may, at the written direction of the County (i) be used to repurchase and retire the applicable Series of Bonds at prices not exceeding the call price first to become available or then prevailing, (ii) be deposited as the County deems advisable or (iii) be transferred to the Construction Fund during the period of construction or acquisition of a Project. Purchases of Bonds shall be effected by the County through the Trustee, and whenever Bonds shall have been purchased pursuant to this authorization, it shall be the duty of the Trustee to cancel and destroy such Bonds and to deliver certificates evidencing such act to the County.

Whenever the value (determined as of the valuation date and in accordance with the method specified in Section 6.10 hereof) of cash and securities in the respective Debt Service Reserve Fund shall be less than the applicable Reserve Fund Requirement, there shall be deposited from available Pledged Revenues into the applicable Debt Service Reserve Fund over the next succeeding twelve (12) months, successive equal monthly installments of the amount necessary to re-establish in the applicable Debt Service Reserve Fund its respective Reserve Fund Requirement.

In lieu of the deposit of moneys into the Debt Service Reserve Fund established with respect to any Series of Bonds to meet the Reserve Fund Requirement with respect to that Series, the County may cause to be credited a surety bond or an insurance policy payable to, or a letter of credit in favor of, the Trustee for the benefit of the Holders of the Bonds meeting the standard set forth in the Supplemental Ordinance authorizing that Series of Bonds, as the case may be. The amount of moneys required to be deposited to the Debt Service Reserve Fund shall be reduced by the amount of the surety bond, insurance policy, or letter of credit. The surety bond, insurance policy, or letter of credit shall be payable (upon the giving of notice as required thereunder) on any Interest Payment Date on which moneys will be required to be withdrawn



from the Debt Service Reserve Fund and applied to the payment of the principal of or interest on any Bonds of that Series but only to the extent that withdrawals cannot be made by amounts then credited to the Debt Service Reserve Fund.

If the County obtains a surety bond, insurance policy or letter of credit in substitution for moneys deposited to the applicable Debt Service Reserve Fund as may be permitted under the applicable Supplemental Ordinance, excess moneys in the respective Debt Service Reserve Funds shall be transferred to the applicable Construction Fund, or if one does not exist, be deposited as the County deems advisable.

Section 6.8. Distribution of Remaining Balance.

In any Fiscal Year, after required deposits have been made into the Debt Service Fund, the Debt Service Reserve Fund, if any, and payment has been made on any Junior Bonds due in such Fiscal Year, there shall be transferred from the Revenue Fund to the Treasurer of the County the remaining balance, if any. Within five Business Days of the Treasurer's receipt thereof, such moneys shall be distributed to the Taxing Districts proportionately based on the ratio which each respective Taxing District's millage rate bears to the combined millage rate of all Taxing Districts during the then current Fiscal Year. Any Authorized County Representative is authorized to direct that the remaining balance of Pledged Revenues in the Revenue Fund be transferred to the Treasurer of the County in accordance with this Section 6.8.

Section 6.9. Establishment of Construction Fund. There shall be established with the Custodian a Construction Fund with respect to each Series of Bonds (other than for Bonds issued pursuant to Section 3.4 hereof) in the Supplemental Ordinance providing for their issuance, the moneys in which shall be used to defray the costs of any Project and to pay any Costs of Acquisition and Construction with respect to the facilities so financed and Costs of Issuance. On the occasion of the delivery of any Series of Bonds (other than Bonds issued pursuant to Section 3.4 hereof), the proceeds therefrom shall be paid into the Construction Fund established for such Series as set forth in a Supplemental Ordinance authorizing their issue. Withdrawals from the Construction Fund shall not be made except as provided in the Supplemental Ordinance establishing such Construction Fund.



Section 6.10. Investment of Funds. Moneys held for the credit of the respective Debt Service Funds shall be invested, to the fullest extent practicable and reasonable, in Permitted Investments which shall mature prior to the respective dates when the moneys held for the credit of such fund will be required for the purpose intended. Moneys in the respective Debt Service Reserve Funds established by this Ordinance or a Supplemental Ordinance shall be invested, to the fullest extent practicable, in Permitted Investments. Moneys in any other funds established by this Ordinance shall be invested, to the fullest extent practicable, in Permitted Investments, maturing at such times and in such amounts as shall be required to provide moneys to make the payments required to be made from such funds. Investment instructions shall be given to the Trustee or to the Custodian, as the case may be, by an Authorized County Representative, provided such instructions which are given orally must be subsequently confirmed in writing.

The Trustee or other depository shall, not later than June 15 of each year, value as of the preceding June 1 or the succeeding Business Day thereafter, Permitted Investments in the various funds established by this Ordinance and held by the Trustee or other depository and shall forward such valuation to the County. The value of Permitted Investments (except investment agreements) shall be determined by the Trustee or other depository at the market value thereof, exclusive of accrued interest, provided, however, Permitted Investments in any Debt Service Reserve Fund shall be valued at cost if the maturity thereof is one year or less and shall be valued at market value and marked to market annually if the maturity thereof is longer than one (1) year. The Trustee shall not be accountable or liable for any depreciation in the value of any investments in any funds or for any losses incurred upon the disposition thereof.

The Trustee shall not be required to enter into any investment, forward delivery or similar agreement unless (a) such agreement is in form and content acceptable to the Trustee, and such agreement provides that the liability of the Trustee thereunder is limited to losses arising from the negligence of the Trustee, and (b) the County agrees to pay the Trustee a separate scheduled fee for its services provided under such agreement.

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## ARTICLE VII

### COVENANTS

Section 7.1. To Pay Principal, Premium and Interest on the Bonds. The County covenants and agrees to punctually pay, or cause to be paid, out of the Pledged Revenues pledged to such payment in Article VI hereof and the Supplemental Ordinance, the principal of, redemption premium, if any, and the interest on each and every Bond issued under the provisions of this Ordinance at the place, on the dates, and in the manner provided herein.

Section 7.2. Joint County Industrial and Business Parks. The County shall promptly perform the duties and obligations imposed and assumed by it in accordance with the terms and provisions of any Park Agreements. The County shall make all reasonable efforts to enforce each of the Park Agreements in accordance with its respective terms and shall not terminate any Park Agreement or materially reduce the properties therein (unless such reduction is by operation of law) unless there shall first be provided to the Trustee and, in the case of the Series 2010 Bond, the registered owner of the Series 2010 Bond, a certificate executed by an Authorized County Representative stating: (a) that, after consideration of the reduction in the Pledged Revenues resulting from the termination of a Park Agreement or reduction of properties therein, the amount of Pledged Revenues, for the prior consecutive 12 month period would be not less than 120% of the Maximum Debt Service for any succeeding Fiscal Year of the Bonds then Outstanding hereunder; and (b) the amount of Pledged Revenues remaining after the termination of the Park Agreement or the reduction of properties therein is sufficient to pay Maximum Debt Service for any succeeding Fiscal Year of the Bonds then Outstanding hereunder.

Section 7.3. Records, Accounts and Audits. The County covenants and agrees to keep proper books of records and accounts (separate from all other records and accounts), in which complete and correct entries shall be made of all transactions relating to the Pledged Revenues. Such records shall be kept in accordance with the standards from time to time prescribed by the Governmental Accounting Standards Board or its successor. The County will cause to be furnished to any Holder of any of the Bonds who makes written request therefor copies of financial statements certified by an Accountant. The Trustee shall not be responsible for obtaining audits of the County.

Section 7.4. Other Obligations and Special Source Credits. Except as otherwise provided in this Ordinance, the County covenants and agrees not to issue any bonds, notes, certificates or other obligations or evidences of indebtedness other than the Bonds or obligations authorized or permitted hereby secured by a pledge of the Pledged Revenues; provided nothing in this Ordinance shall prevent or prohibit the County from issuing any Other Obligations or granting any Special Source Credits after the enactment of this Ordinance; and, provided further that no Special Source Credits with respect to the Highpointe/PointeWest Park shall be provided without the prior written consent of the registered owner of the Series 2010 Bond.

## ARTICLE VIII

### TRUSTEE; RESIGNATION OF TRUSTEE; LIABILITY OF TRUSTEE FOR INVESTMENTS; CUSTODIANS

Section 8.1. Trustee. The Council hereby designates U.S. Bank National Association as Trustee under this Ordinance.

On or prior to the delivery of the Series 2010 Bond, the Trustee shall signify its acceptance of the powers, duties and obligations conferred and imposed upon it by this Ordinance by executing and delivering to the County a written instrument of acceptance.

The Trustee shall (a) prior to the occurrence of an Event of Default as set forth in Article X hereof, and after the curing of all Events of Default which may have occurred, perform such duties and obligations as are specifically set forth in this Ordinance, and no implied covenants or obligations shall be read into this Ordinance against the Trustee, and (b) during the existence of any Event of Default of which the Trustee has actual notice (which has not been cured or waived) exercise the rights and powers vested in it by this Ordinance and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provisions of this Ordinance shall be construed to relieve the Trustee from liability for its own negligence or intentionally wrongful action or failure to act.

At all times, (a) the Trustee shall not be liable for any error of judgment made in good faith by an officer or employee of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; (b) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority (or such lesser percentage as is specifically required or permitted by this Ordinance) in the aggregate principal amount of the Bonds at the time Outstanding relating to the time, method and place of conducting a proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee under this Ordinance; and (c) in the administration of the trusts of this Ordinance, the Trustee may execute any of the trusts or powers hereof directly or through its agents or attorneys and shall not be responsible for any misconduct or negligence of any such agent or attorneys. The Trustee may consult with counsel at the County's expense and the written opinion of such counsel addressed to the County and the Trustee shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

The Trustee may rely upon the authenticity and truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting upon any notice, resolution, request, consent order, certificate, report, opinion, note, or other paper or document furnished to it pursuant to any provision of this Ordinance, believed by it to be genuine and to have been signed and presented by the proper party.

The Trustee shall not be required to take notice or be deemed to have notice or actual knowledge of any Event of Default specified in Article X hereof other than a payment default described in subparagraphs A or B of Section 10.1 unless the Trustee shall receive from the County or the Holders of 25% in principal amount of the Bonds then Outstanding written notice stating that an Event of Default hereunder has occurred and specifying the same, and, in the absence of such notice, the Trustee may conclusively assume that there is no such Event of Default.

The Trustee shall be entitled to payment of and reimbursement by the County for reasonable fees and expenses in accordance with its then applicable fee schedule for its services rendered hereunder and all advances and counsel fees reasonably and necessarily made or incurred by the Trustee in connection with such services. The obligations of the County to make the payments described in this Section 8.1 shall survive discharge of this Ordinance, the resignation and removal of the Trustee and payment in full of the Bonds.

The Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conformed to the requirements of this Ordinance.

No provision of this Ordinance or any Supplemental Ordinance shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it has reasonable grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

Any request, direction, order or demand of the County under this Ordinance shall be sufficiently evidenced by a written certificate of a Authorized County Representative (unless other evidence thereof is specifically prescribed) and any resolution of the Council may be sufficiently evidenced by a copy thereof certified by an Authorized County Representative.

Whenever in the administration of this Ordinance or any Supplemental Ordinance the Trustee deems it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence thereof is specifically prescribed) may rely upon a certificate of the Authorized County Representative.

The Trustee is not required to make any inquiry or investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, approval, bond, debenture or other paper or document; but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit and, if the Trustee determines to make such further inquiry or investigation, it is entitled to examine the books, records and premises of the County in person or by its agent or attorney.



The Trustee is not required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Ordinance or any Supplemental Ordinance.

In the event the Trustee receives inconsistent or conflicting requests and indemnity from two or more groups of holders of Bonds, each representing less than a majority in aggregate principal amount of the Bonds Outstanding, pursuant to the provisions of this Ordinance or any Supplemental Ordinance, the Trustee, in its sole discretion, may determine what action, if any, shall be taken.

The Trustee's immunities and protections from liability and its right to indemnification in connection with the performance of its duties under this Ordinance or any Supplemental Ordinance shall extend to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and right to indemnification, together with the Trustee's right to compensation, shall survive the Trustee's resignation or removal, the discharge of this Ordinance and any Supplemental Ordinance and final payment of the Bonds.

The permissive right of the Trustee to take the actions permitted by this Ordinance and any Supplemental Ordinance shall not be construed as an obligation or duty to do so.

Except for information provided by the Trustee concerning the Trustee, the Trustee shall have no responsibility for any information in any offering memorandum or other disclosure material distributed with respect to the Bonds, and the Trustee shall have no responsibility for compliance with any state or federal securities laws in connection with the Bonds.

The recitals contained in this Ordinance and in the Bonds (other than the certificate of authentication on the Bonds) are statements of the County, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the value, condition or sufficiency of any assets pledged or assigned as security for the Bonds, the right, title or interest of the County therein, the security provided thereby or by this Ordinance, or the tax-exempt status of the Bonds. The Trustee is not accountable for the use or application by the County of any of the Bonds or the proceeds of the Bonds, or for the use or application of any moneys paid over by the Trustee in accordance with any provision of this Ordinance.

The Trustee, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds and may join in any action which any Bondholder may be entitled to take with like effect as if it were not Trustee. The Trustee, in its commercial banking or in any other capacity, may also engage in or be interested in any financial or other transaction with the County and may act as depository, trustee or agent for any committee of Bondholders secured hereby or other obligations of the County as freely as if it were not Trustee. The provisions of this Section 8.1 shall extend to affiliates of the Trustee.

The Trustee shall not, in any event, be required to take, defend, or appear in any legal action or proceeding hereunder or to exercise any of the trusts or powers hereof unless it shall first be adequately indemnified to its satisfaction against the costs, expenses, and liabilities which may be incurred thereby. Every provision of this Ordinance relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions hereof.

To the extent permitted by law, the County hereby agrees to indemnify, defend and hold



the Trustee harmless from and against any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the office of Trustee under this Ordinance, including the costs of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

Section 8.2. Resignation of Trustee. The Trustee may resign at any time by giving thirty (30) days' written notice to the County and by giving notice to the Holders of the Bonds by publication of such resignation and, in the case of the Series 2010 Bond, written notice to the registered owner thereof. Such notice shall be published at least once in a financial journal of general circulation published on each business day in each calendar week in the City of New York, New York. No resignation will become effective until a successor Trustee has been appointed and accepts such appointment as provided below. Upon receiving notice of resignation, the County shall promptly appoint such successor Trustee by an instrument in writing executed by order of its Council. In the event a successor Trustee has not been appointed within sixty (60) days of the date notice of resignation is given, the Trustee, at the County's expense, may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed as provided in this Section.

Section 8.3. Removal of Trustee. Upon thirty (30) days written notice, the County, at its sole discretion, provided that an Event of Default shall not have occurred and be continuing, may remove the Trustee. The removal of the Trustee under this Section 8.3 shall not be effective until a successor Trustee has been appointed and has accepted the duties of Trustee.

With or without cause, the Holders of a majority in aggregate principal amount of the Bonds at the time outstanding may, upon thirty (30) days written notice to the Trustee and the County, remove the Trustee and appoint a successor Trustee by instrument or instruments in writing signed by such Holders of the Bonds. In the event a successor Trustee has not been appointed within sixty (60) days of the date notice of removal is given, the Trustee, at the County's expense, may apply to any court of competent jurisdiction for the appointment of a successor Trustee to act until such time as a successor is appointed as provided in this Section 8.3.

Section 8.4. Successor Trustee. Unless otherwise ordered by a court or regulatory body having competent jurisdiction, or unless required by law, any successor Trustee shall, if there is such an institution willing, qualified and able to accept the trust upon reasonable or customary terms, be (i) a bank, or a wholly owned subsidiary of a bank holding company, having a combined capital, surplus and undivided profits of at least \$50,000,000; or (ii) a trust company having at least \$100,000,000 of trust assets under management and a combined capital, surplus and undivided profits of at least \$50,000,000 and, in each case, being qualified to do, and doing, trust business in the State.

Any successor Trustee appointed as provided in this section, shall execute, acknowledge and deliver to the County and its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of its predecessor of the trust hereunder. Upon the request of any such successor Trustee, the County shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Trustee all such rights, powers and duties. Upon acceptance of appointment by a successor Trustee, the County shall notify the registered Holder of each Bond then Outstanding by first-class mail, postage prepaid.

The predecessor Trustee shall execute any and all documents necessary or appropriate to convey all interest it may have to the successor Trustee. The predecessor Trustee shall promptly transfer all funds to the successor Trustee and deliver all records relating to the trust or copies thereof and communicate all material information it may have obtained concerning the trust to the successor Trustee.

Any corporation or association into which the Trustee may be merged or with which it may be consolidated, or any corporation or association resulting from any merger, or any corporation or association succeeding to the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

Each, every and all funds and accounts held by the Trustee shall be impressed with a trust for the benefit of the Holders of the Bonds, under the provisions of this Ordinance and of the Act.

Section 8.5. Custodians. The Construction Fund shall at the option of the County be held by a bank, a trust company, a national banking association or a national association as Custodian under this Ordinance or a Supplemental Ordinance.

Section 8.6. Liability of Trustee for Investments. The Trustee and all Custodians shall not be liable for the making of any investment authorized by this Ordinance in the manner provided in this Ordinance or for any loss resulting from any such investment so made, except for its own negligence or willful misconduct. All investments shall be made in accordance with Section 6.12 of this Ordinance.

Section 8.7. Trustee and Custodians Protected in Relying upon Resolutions. The Trustee and all Custodians shall at all times be protected in acting upon any notice, resolution, request, consent, order, certificate, statement, opinion, bond, or other paper or document believed to be genuine and to have been signed by the proper party or parties.

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## ARTICLE IX

### AMENDMENTS OR SUPPLEMENTS TO THIS ORDINANCE

Section 9.1. Amendments or Supplements to this Ordinance. The County shall not amend this Ordinance except in accordance with the provisions of this Article.

A. The County may, from time to time and without the consent of any Holder of the Bonds enact an ordinance amendatory hereof or supplemental hereto for the purpose of (a) providing for the issuance of Bonds pursuant to the provisions of Article III hereof, or (b) (i) making any amendments or modifications hereto which may be required to permit this Ordinance to be qualified under the Trust Indenture Act of 1939, as amended; (ii) making any modification or amendment to this Ordinance not inconsistent herewith required for the correction of language or to cure any ambiguity or defective provisions, omission, mistake or manifest error herein contained; (iii) making any amendments or supplements hereto to grant to or confer upon the Holders additional rights, remedies, power and authority, or to grant to or confer upon any Holders, committee or trustee for the Holders any additional rights, power or authority; or (iv) to add to the security of the Holders of the Bonds.

B. From time to time the Holders of 66-2/3% in principal amount of the Bonds then Outstanding, by an instrument or instruments in writing signed by such Holders and filed with the County and the Trustee, shall have power to assent to and authorize any modification or amendment to the provisions of this Ordinance that may be proposed by the County or of the rights and obligations of the County and of the Holders of Bonds issued hereunder. Any action herein authorized to be taken with the assent and authority given as aforesaid of the Holders of at least 66-2/3% in principal amount of the Bonds at the time Outstanding shall be effective and binding upon all of the Holders of Bonds issued hereunder; and any action herein authorized to be taken with the assent and authority given as aforesaid of the Holders of 66 2/3% in principal amount of the Bonds at the time Outstanding shall be effective and binding upon all of the Holders of Bonds Outstanding and upon the County as fully as though such action were specifically and expressly authorized by the terms of this Ordinance; provided always that without the consent of the Holder of each Bond affected thereby, no such modification shall be made which will (a) extend the time of payment of principal of or the interest on any Bond, or reduce the principal amount thereof or the rate of interest thereon or the premium payable upon the redemption thereof, or (b) give to any Bond or Bonds any preference over any other Bond or Bonds, or (c) authorize the creation of any pledge prior to or, except as provided herein for the issuance of Series of Bonds, on a parity with the pledge afforded by this Ordinance, (d) amend any of the covenants set forth in Article VII hereof, or (e) reduce the percentage in principal amount of the Bonds required to assent to or authorize any such modification to this Ordinance. For the purpose of computations required by this paragraph, Bonds directly or indirectly owned or controlled by the County shall be disregarded.

Any modification or amendment or supplement to the provisions of this Ordinance or of any Supplemental Ordinance supplemental hereto shall be set forth in an ordinance to be enacted by the County.

No amendment or supplement which adversely affects the Trustee's rights, duties, obligations or responsibilities may be effected without the consent of the Trustee.

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## ARTICLE X

### EVENTS OF DEFAULT

Section 10.1. Events of Default. With respect to the Bonds, the following shall constitute "Events of Default":

A. If payment of the principal of any Bond, whether at maturity or by proceedings for redemption, or upon mandatory sinking fund redemption, or by declaration as provided in Section 11.1 hereof, or otherwise, is not made by the County as the same becomes due and payable; or

B. If payment of any installment of interest on any Bond is not made by the County as the same becomes due and payable; or

C. If the County shall fail or refuse to comply with the essential provisions of the Act, or shall fail in the due and punctual performance of any of the covenants, conditions, agreements and provisions contained in the Bonds or in this Ordinance or in any Supplemental Ordinance on the part of the County to be performed, and such failure continues for sixty (60) days after written notice specifying such failure and requiring the same to be remedied has been given to the County by the Trustee, or the Holders of not less than 20% in principal amount of the Bonds then Outstanding or any trustee or committee therefor; or

D. If any proceedings are instituted, with the consent or acquiescence of the County, for the purpose of effecting a composition between the County and its creditors and if the claim of such creditors is in any circumstance payable from any of the Pledged Revenues or any other moneys pledged and charged in this Ordinance or any Supplemental Ordinance for the payment of the Bonds, or any such proceedings are instituted for the purpose of adjusting the claims of such creditors, pursuant to any federal or State statute now or hereafter enacted; or

E. If the County is for any reason rendered incapable of fulfilling its obligations hereunder in any material respect.

Subject to the provisions, limitations and conditions of Sections 11.1 and 11.2 hereof, insofar as the remedies provided in said provisions are concerned, nothing in Section 11.3 hereof or in this Article, and particularly nothing in subparagraph C of this Section 10.1, shall prohibit or limit, or be construed as prohibiting or limiting any Holder of a Bond from enforcing the duties of the County, or any of the officers thereof, under any provisions of this Ordinance (including, without limiting the generality of the foregoing, the duties imposed by or referred to in Section 11.3 hereof) by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction, even though the failure of the County or any of the officers thereof to perform any such duty may not then constitute an "Event of Default" as defined in this Article.

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## ARTICLE XI

### REMEDIES UPON EVENT OF DEFAULT

Section 11.1. Declaration of Principal and Interest as Due. Upon the occurrence of an Event of Default, and at any time thereafter while such Event of Default continues, then and in each and every case the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Holders of all Outstanding Bonds, may proceed, and upon the written request of the Holders of not less than 25% in principal amount of the Bonds then Outstanding, shall proceed to declare the principal of all Bonds then Outstanding, together with all accrued and unpaid interest thereon, if not already due, to be due and payable immediately, and upon any such declaration the same shall become and be due and payable immediately, subject to the limitations contained in Section 6.3 hereof. This provision is also subject, however, to the condition that, if at any time after the principal of the Bonds, together with the accrued and unpaid interest thereon and other moneys secured hereby, have been so declared due and payable and before any further action has been taken (other than the making of the above declaration), the principal amount of all Bonds which have matured either according to the maturity date or dates otherwise specified therein (except as a result of such declaration) and all arrears of interest upon all Bonds, except interest accrued but not yet due on said Bonds, have been paid or caused to be paid, and all other Events of Default, if any, which have occurred have been remedied, cured or secured, then and in each and every such case the Holders of 25% in principal amount of the Bonds then Outstanding, by notice in writing delivered to the Trustee and the County, may waive such Default and its consequences and rescind and annul such declaration. No such waiver or rescission or annulment shall extend to or affect any subsequent default or impair or exhaust any right or power related to such subsequent Default.

Section 11.2. Suits at Law or in Equity and Mandamus. In case any one or more of the Events of Default shall happen and be continuing, then and in every such case, but subject to the provisions, limitations and conditions of Section 11.1 hereof so far as the remedies provided in said provisions are concerned, the Holder of any Bond at the time Outstanding, or Trustee therefor, may, for the equal benefit and protection of all Holders of the Bonds similarly situated,

- (a) by mandamus or other suit, action or proceedings at law or in the equity, enforce such Bondholder's right against the County and require and compel the County to perform and carry out its duties and obligations under the Act and this Ordinance, and to perform and carry out its covenants and agreements with the Bondholders;
- (b) by action or suit in equity require the County to account as if such County were the trustee of an express trust;
- (c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Bondholders; or
- (d) bring suit upon the Bonds.

Section 11.3. Remedies Not Exclusive; Effect of Waiver of Default; Effect of Abandonment of Proceedings or Adverse Determination. The Holders from time to time of the Bonds shall be entitled to all the remedies and benefits of this Ordinance as are and as shall be provided by law, and, subject to the provisions of Section 11.1 hereof, nothing herein shall be construed to limit the rights or remedies of any such Holders under any applicable statute that may now exist or be enacted thereafter. No remedy conferred by the Act and this Article upon any Holder of any Bond is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to every other remedy and may be exercised without exhausting and without regard to any other remedy conferred by the Act and this Article or by any other law now or hereafter existing. Every substantive right and remedy conferred upon the Holders of the Bonds may be enforced and exercised from time to time and as often as may be deemed expedient.

No waiver of any default or breach of duty or contract by any Holder of any Bond shall extend to or affect any subsequent default or breach of duty or contract, or shall impair any rights or remedies thereon. No delay or omission of any Holder of a Bond to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein.

In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to Holders of the Bonds then and in every such case, the County and such Holders shall be restored to their former positions and rights and remedies as if no suit, action or proceeding had been brought or taken.

Section 11.4. Restrictions on Bondholder's Action.

A. No Holder of any Bond shall have any right to institute any suit, action or proceeding at law or in equity for the enforcement of any provision of this Ordinance or the execution of any trust under this Ordinance or for any remedy under this Ordinance unless such Holder shall have previously given to the Trustee written notice of the happening of an Event of Default and the Holders of at least 25% in principal amount of the Bonds then Outstanding shall have filed a written request with the Trustee and shall have offered the Trustee reasonable opportunity, either to exercise the powers granted in this Ordinance or by the laws of the State or to institute such action, suit or proceeding in its own name, and unless such Holders shall have offered to the Trustee adequate security and indemnity against the costs, fees (including reasonable attorneys' fees), expenses and liabilities to be incurred therein or thereby, and the Trustee shall have refused to comply with such request for a period of sixty (60) days after receipt by it of such notice, request an offer of indemnity. No one or more Holders of Bonds shall have any right in any manner whatever by his or their action to affect, disturb or prejudice the pledge created by this Ordinance, or to enforce any right under this Ordinance, except in the manner therein provided. All proceedings at law or in equity to enforce any provision of this Ordinance shall be instituted, had and maintained in the manner provided in this Ordinance and for the equal benefit of all Holders of the Outstanding Bonds.

B. Notwithstanding Section 11.4(A) of this Ordinance, nothing in this Ordinance or in the Bonds contained shall affect or impair the obligation of the County, which is absolute and unconditional, to pay at the respective dates of maturity and places therein expressed the principal of (and redemption premium, if any) and interest on the Bonds to the respective Holders thereof, subject to the limitations contained in Section 6.3 hereof, or affect or impair the right of action, which is also absolute and unconditional, of any Holder to enforce such payment of his Bond.

Section 11.5. Application of Revenues and Other Moneys After Default. During the continuance of an Event of Default, all moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the fees, expenses and advances incurred or made by the Trustee with respect thereto, be deposited in the respective Debt Service Funds, and all amounts held by the Trustee hereunder shall be applied as follows (provided if more than one Debt Service Fund has been established, such amounts shall be paid ratably):

A. Unless the principal of all Outstanding Bonds shall have become or have been declared due and payable:

First: To the payment to the persons entitled thereto of all installments of interest then due on the Bonds in the order of maturity of such installments, and, if the amount available shall not be sufficient to pay in full any installment or installments maturing on the same date, then to the payment thereof ratably, according to the amounts due thereon to the person entitled thereto, without any discrimination or preference; and

Second: To the payment to the persons entitled thereto of the unpaid principal amounts or redemption premium, if any, of any Bonds which shall have become due (other than Bonds previously called for redemption in accordance with the provisions hereof), whether at maturity or by call for redemption, in the order of their due dates, and if the amounts available shall not be sufficient to pay in full all the Bonds due on any date, then to the payment thereof ratably, according to the principal amounts or redemption premium, if any, due on such date, to the persons entitled thereto, without any discrimination or preference.

B. If the principal amounts of all Outstanding Bonds shall have become or have been declared due and payable, to the payment of the principal amounts and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal amounts and interest, to the persons entitled thereto without any discrimination or preference.

C. If the principal amounts of all Outstanding Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded and annulled under the provisions of this Article XI, then, subject to the provisions of this Section 11.6 in the event that the principal amounts of all Outstanding Bonds shall later become due or be declared due and payable, the moneys shall be applied in accordance with the provisions of paragraph (A) of this Section 11.6.

D. Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section, such moneys shall be applied by it at such times, and from time to time, as the Trustee shall determine, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be a Bond payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the principal amounts to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the Holder of any Bond until such Bond shall be presented to the Trustee for appropriate endorsement of any partial payment or for cancellation if fully paid.

E. Whenever all Bonds and interest thereon have been paid under the provisions of this Section and all expenses and charges of the Trustee have been paid, any balance remaining shall be paid to the person entitled to receive the same; if no other person shall be entitled thereto, then the balance shall be paid to the County or as a court of competent jurisdiction may direct.

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## ARTICLE XII

### DEFEASANCE

Section 12.1. Defeasance. The obligations of the County under this Ordinance and the liens, pledges, charges, trusts, covenants and agreements of the County herein made or provided for, shall be fully discharged and satisfied as to any Bond; and, unless or except as otherwise provided in the Supplemental Ordinance providing for the issuance of any Series of Bonds, such Bond or Series of Bonds shall no longer be deemed to be Outstanding hereunder, when:

A. Such Bond or Series of Bonds shall have been purchased by the County and surrendered to the County for cancellation or otherwise surrendered to the County or the Paying Agent, and is canceled or subject to cancellation by the County or Paying Agent; or

B. Payment of the principal of, redemption premium, if any, and interest on such Bond or Series of Bonds, either (a) shall have been made or caused to be made in accordance with the terms thereof, or (b) shall have been provided for by irrevocably depositing with the Trustee in trust and irrevocably setting aside exclusively for such payment, (i) moneys sufficient to make such payment, or (ii) Government Obligations maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make such payment, and all necessary and proper fees, compensation and expenses of the Trustee, Paying Agent and the Registrar, or a combination thereof. At such time as a Bond or Series of Bonds shall no longer be deemed to be Outstanding hereunder, as aforesaid, such Bond or Series of Bonds shall cease to draw interest from the maturity date or redemption date thereof, and, except for the purposes of any such payment from such moneys or Government Obligations, shall no longer be secured by or entitled to the benefits of this Ordinance.

Any moneys so deposited with the Trustee as provided in this Article may at the direction of the County also be invested and reinvested in Government Obligations, maturing in the amounts and times as hereinbefore set forth, and all income from all Government Obligations in the hands of such Trustee which is not required for the payment of the Bonds or Series of Bonds and interest thereon with respect to which such moneys shall have been so deposited, shall be treated as Pledged Revenues.

Notwithstanding any provision hereof which may be contrary to the provisions of this Article, all moneys or Government Obligations set aside and held in trust pursuant to the provisions of this Article for the payment of Bonds or Series of Bonds shall be applied to and used solely for the payment of the particular Bonds or Series of Bonds with respect to which such moneys and Government Obligations have been so set aside in trust.

Any provision hereof to the contrary notwithstanding, if moneys or Government Obligations have been deposited or set aside with the Trustee pursuant to this Article for the payment of the Bonds and such Bonds shall not have in fact been actually paid in full, no amendment to the provisions of this Article shall be made without the consent of the Bondholder of each Bond or Series of Bonds affected thereby.

If moneys or Government Obligations have been deposited with the Trustee pursuant to this Section 12.1 for payment of less than all Bonds of a Series and maturity, the Bonds of such



Series and maturity to be so paid from such deposit shall be selected by the Trustee by lot by such method as shall provide for the selection of portions (in authorized denominations) of the principal of Bonds of such Series and maturity of a denomination larger than the smallest authorized denomination. Such selection shall be made within seven (7) days after the moneys or Government Obligations have been deposited with the Trustee. This selection process shall be in lieu of the selection process otherwise provided with respect to redemption of Bonds in Article V. After such selection is made, Bonds that are to be paid from such deposit (including Bonds issued in exchange for such Bonds pursuant to the transfer or exchange provisions of this Ordinance) shall be identified by a separate CUSIP number or other designation satisfactory to the Trustee. The Trustee shall notify Bondholders whose Bonds (or portions thereof) have been selected for payment from the moneys or Government Obligations on deposit and shall direct such Bondholders to surrender their Bonds to the Trustee in exchange for Bonds with the appropriate designation. The selection of Bonds for payment from such deposit pursuant to this paragraph shall be conclusive and binding upon the County and the Bondholders.

The County shall give to the Trustee in form satisfactory to it irrevocable instructions to give notice of the deposit of moneys or Government Obligations, the selection of Bonds to be redeemed including CUSIP numbers and the anticipated date of redemption. The Trustee shall promptly give such notice to the Bondholders including the information required under Section 5.3.

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## ARTICLE XIII

### MISCELLANEOUS

Section 13.1. Benefits of Ordinance Limited to the County, the Trustee and Holders of the Bonds. With the exception of rights or benefits herein expressly conferred, nothing expressed or mentioned in or to be implied from this Ordinance or the Bonds is intended or should be construed to confer upon or give to any person other than the County, the Trustee and the Holders of the Bonds, any legal or equitable right, remedy or claim under or by reason of or in respect to this Ordinance or any covenant, condition, stipulation, promise, agreement or provision herein contained. This Ordinance and all of the covenants, conditions, stipulations, promises, agreements and provisions hereof are intended to be and shall be for and inure to the sole and exclusive benefit of the County, the Trustee and the Holders from time to time of the Bonds as herein and therein provided.

Section 13.2. Ordinance Binding Upon Successors or Assigns of the County. All the terms, provisions, conditions, covenants, warranties and agreements contained in this Ordinance shall be binding upon the successors and assigns of the County and shall inure to the benefit of the Trustee, its successors or substitutes in trust and assigns, and the Holders of the Bonds.

Section 13.3. No Personal Liability. No recourse shall be had for the enforcement of any obligation, covenant, promise or agreement of the County contained in this Ordinance or the Bonds, against any member of the County, any officer or employee, as such, in his or her individual capacity, past, present or future, of the County, either directly or through the County, whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. It is expressly agreed and understood that this Ordinance and the Bonds are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any member, officer or employee as such past, present or future, of the County, either directly or by reason of any of the obligations, covenants, promises, or agreements entered into between the County and the Trustee or the Bondholder or to be implied therefrom as being supplemental hereto or thereto. All personal liability of that character against every such member, officer and employee is, by the adoption of this Ordinance and the execution of the Bonds, and as a condition of, and as a part of the consideration for, the adoption of this Ordinance and the execution of the Bonds, expressly waived and released. The immunity of members, officers and employees of the County under the provisions contained in this Section 13.3 shall survive the termination of this Ordinance.

Section 13.4. Effect of Saturdays, Sundays and Legal Holidays. Whenever this Ordinance requires any action to be taken on a Saturday, Sunday, legal holiday or bank holiday in the State, such action shall be taken on the first Business Day occurring thereafter. Whenever in this Ordinance the time within which any action is required to be taken or within which any right will lapse or expire shall terminate on a Saturday, Sunday, legal holiday or bank holiday, in the State, such time shall continue to run until midnight on the succeeding Business Day. Interest on such principal amount shall cease to accrue on the date on which such payment was due if such payment is made on the immediately succeeding Business Day.

Section 13.5. Partial Invalidity. If any one or more of the covenants or agreements or portions thereof provided in this Ordinance on the part of the County or the Trustee or any

Paying Agent to be performed should be determined by a court of competent jurisdiction to be contrary to law, then such covenant or covenants, or such agreement or agreements, or such portions thereof, shall be deemed severable from the remaining covenants and agreements and portions thereof provided in this Ordinance and the invalidity thereof shall in no way affect the validity of the other provisions of this Ordinance or of the Bonds, but the Holders of the Bonds shall retain all the rights and benefits accorded to them hereunder and under any applicable provisions of law.

If any provisions of this Ordinance shall be held or deemed to be or shall, in fact, be inoperative or unenforceable or invalid as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because of conflicts with any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable or invalid in any other case or circumstance, or of rendering any other provision or provisions herein contained inoperative or unenforceable or invalid to any extent whatever.

Section 13.6. Law and Place of Enforcement of this Ordinance. This Ordinance shall be construed and interpreted in accordance with the laws of the State and all suits and actions arising out of this Ordinance shall be instituted in a court of competent jurisdiction in the State.

Section 13.7. Effect of Article and Section Headings and Table of Contents. The headings or titles of the several Articles and Sections hereof, and any table of contents appended hereto or to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this Ordinance.

Section 13.8. Amendment to Multi-County Park Ordinances; Distribution of Highpointe/PointeWest Park Fee Payments; Repeal of Inconsistent Ordinances and Resolutions. The Multi-County Park Ordinances, other than Ordinance No. 2010-07 of the County which authorizes the establishment of the Highpointe/PointeWest Park, are hereby amended to provide that fifteen percent (15%) of the Fee Payments paid by or on behalf of the owners or lessees of property located within both the geographical boundaries of the County and in the respective Joint County Industrial and Business Parks authorized to be established by such Multi-County Park Ordinances, calculated prior to the payment of any Other Obligations and Special Source Credits and after payment of the Multi-County Fee to one or more Partner Counties under the terms of the respective Park Agreements, shall be retained by the County, deposited into the Revenue Fund established herein and be made available for use by the County in accordance with Article VI hereof, including payment of Debt Service on Bonds or Junior Bonds. The County hereby directs that one hundred percent (100%) of the Fee Payments paid by or on behalf of the owners or lessees of property located within both the geographical boundaries of the County and in the Highpointe/PointeWest Park, calculated after payment of the Multi-County Fee to the Partner County due thereunder, shall be retained by the County, deposited into the Revenue Fund established herein and be made available for use by the County in accordance with Article VI hereof, including payment of Debt Service on Bonds or Junior Bonds. All remaining provisions of the Multi-County Park Ordinances shall remain unchanged. All ordinances and resolutions of the County, and any part of any ordinance or resolution, inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Section 13.9. Effectiveness of this Ordinance. This Ordinance shall become effective upon its enactment; provided, however, that it shall not be necessary for the County to establish the funds and accounts created in Article VI hereof prior to the issuance of any Bonds.

Section 13.10. Notices. All notices, certificates, or other communications hereunder or under this Ordinance shall be sufficiently given and shall be deemed given when mailed by registered mail, postage prepaid, or given when dispatched by telegram addressed as follows:

If to the County:

Oconee County, South Carolina  
415 S. Pine Street  
Walhalla, South Carolina 29691  
Attention: County Administrator

If to the Trustee:

U.S. Bank National Association  
1426 Main Street, 17th Floor (SC8358)  
Columbia, SC 29201

The County and the Trustee may, by notice given to the other parties, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Section 13.11. Codification. This Ordinance shall be forthwith codified in the Code of County Ordinances in the manner required by law and the name shall be indexed under the general heading "General Bond Ordinance – Oconee County, South Carolina, Special Source Revenue Bonds".

[Signature page follows]

Enacted by the County Council of Oconee County, South Carolina, this 4<sup>th</sup> day of May, 2010.

OCONEE COUNTY, SOUTH CAROLINA

(SEAL)

\_\_\_\_\_  
Chairman, County Council  
Oconee County, South Carolina

ATTEST:

\_\_\_\_\_  
Administrator, Oconee County, South Carolina

\_\_\_\_\_  
Clerk to County Council,  
Oconee County, South Carolina

Date of First Reading: February 16, 2010  
Date of Second Reading: April 6, 2010  
Date of Public Hearing: April 20, 2010  
Date of Third Reading: May 4, 2010

[Signature Page]



Oconee County, South Carolina

Summary of Request for Proposals for 2010 Special Source Revenue Bonds

Request for Proposals were sent to the following financial institutions:

Bank of America	declined to bid
First Citizens Bank	no response
RBC Bank	declined to bid
SunTrust	no response
Regions Bank	no response
<b>BB&amp;T</b>	<b>4.6%</b>
National Bank of South Carolina	no response
Green Campus Partners	no response
Community First Bank	no response
Wachovia	declined to bid

The interest rate stated above is valid for a closing not later than 45 days after today. Closing of the financing is contingent upon completing documentation acceptable to BB&T.

The stated interest rate assumes that the County expects to borrow less than \$30,000,000 in calendar year 2010 and that the County shall comply with IRS Code Sections 140, 141, 148 and 149(e). BB&T reserves the right to terminate its interest in this bid or to negotiate a mutually acceptable rate if the financing is not qualified tax-exempt financing.

(4) **Financing Documents:**

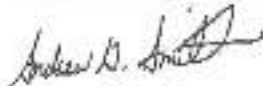
It will be the responsibility of the County to retain and compensate bond counsel to appropriately structure the transaction. All documentation must be deemed appropriate by BB&T.

BB&T shall have the right to cancel this offer by notifying the County of its election to do so (whether or not this offer has previously been accepted by the County) if at any time prior to the closing there is a material adverse change in the County's financial condition, if we discover adverse circumstances of which we are currently unaware, if we are unable to agree on acceptable documentation with the County or if there is a change in law (or proposed change in law) that changes the economic effect of this financing to BB&T. We reserve the right to negotiate and/or terminate our interest in this transaction should we be the successful proposer.

Please call me at 803-251-1328 with your questions and comments. We look forward to hearing from you.

Sincerely,

Branch Banking and Trust Company



Andrew G. Smith  
Senior Vice President

**Oconee County, South Carolina**

Special Source Revenue Bond, Series 2010

FINAL: Sold to BB&T on 05.04.10 - Delivery on 05.27.10  
(Highpointe/PointeWest Park)

**Debt Service Schedule**

Part 2 of 2

**Yield Statistics**

Bond Year Dollars	\$31,766,56
Average Life	9.074 Years
Average Coupon	4.6000000%
Net Interest Cost (NIC)	4.6000000%
True Interest Cost (TIC)	4.5501079%
Bond Yield for Arbitrage Purposes	4.5501079%
All Inclusive Cost (AIC)	4.5501079%
<b>IRS Form 8038</b>	
Net Interest Cost	4.6000000%
Weighted Average Maturity	9.074 Years

ATC 5876 | SINGLE PURPOSE | 840210 | 12:55 PM

**Ross, Sinclair & Associates, LLC**  
Public Finance - BNYrick

**Oconee County, South Carolina**

Special Source Revenue Bond, Series 2010

FINAL; Sold to BB&T on 05.04.10 - Delivery on 05.27.10

(Highpointer/Pointe West Park)

**Debt Service Schedule**

Part 1 of 2

Date	Principal	Coupon	Interest	Total P+I
12/31/2010	-	-	135,955.56	135,955.56
12/31/2011	-	-	161,000.00	346,000.00
12/31/2012	185,000.00	4.600%	152,490.00	342,490.00
12/31/2013	190,000.00	4.600%	143,750.00	343,750.00
12/31/2014	200,000.00	4.600%	130,550.00	344,550.00
12/31/2015	220,000.00	4.600%	124,890.00	340,890.00
12/31/2016	230,000.00	4.600%	114,770.00	344,770.00
12/31/2017	230,000.00	4.600%	104,190.00	344,190.00
12/31/2018	240,000.00	4.600%	93,130.00	343,130.00
12/31/2019	265,000.00	5.000%	81,500.00	346,500.00
12/31/2020	275,000.00	4.600%	69,400.00	341,400.00
12/31/2021	280,000.00	4.600%	56,810.00	345,810.00
12/31/2022	290,000.00	4.600%	45,470.00	343,470.00
12/31/2023	300,000.00	4.600%	39,620.00	344,620.00
12/31/2024	330,000.00	4.600%	15,180.00	345,180.00
<b>Total</b>	<b>\$5,500,000.00</b>	<b>-</b>	<b>\$1,460,985.56</b>	<b>\$4,460,985.56</b>

2010-2025 | SPECIAL PURPOSE | 5/4/2010 | 10:22 AM

**Ross, Sindlaire & Associates, LLC**  
Public Finance - BNurick



BB&T Governmental Finance

P.O. Box 714  
Columbia, S.C. 29202  
(803) 251-1328  
Fax (803) 251-1329

May 3, 2010

Ms. Kendra Brown  
Asst. Co. Administrator  
Oconee County  
415 S. Pine St.  
Walhalla, SC 29691

Dear Ms. Brown:

Branch Banking and Trust Company ("BB&T"), is pleased to offer this proposal for the financing requested by Oconee County ("County").

- (1) **Project:** Special Source Revenue Bond, Series 2010
- (2) **Amount To Be Financed:** \$3,500,000 (not to exceed)
- (3) **Interest Rates, Financing Terms:**

We offer a fixed interest rate of 4.60% for a bond with a term of fifteen years. This rate will be fixed for the full term.

Security for the bond shall be in the form of the following: (a) a pledge of revenues equivalent to fifteen percent of the total fee in lieu of tax revenues derived from existing county industrial properties that have a multi county park designation; and (b) a pledge of 99 percent of all property taxes and/or fee in lieu of tax revenues related to the Highpoints and Pointe West developments located in a multi county park.

The Bond shall be prepayable in whole upon any scheduled payment date with a prepayment penalty equivalent to one percent of the remaining principal. BB&T must approve of any amortization schedules used in the transaction. BB&T envisions a payment schedule with approximately level debt service after an interest only payment on April 1, 2011.

Upon closing, the transaction will be fully funded with the proceeds deposited in a project fund with BB&T Governmental Finance. BB&T must approve of the funding requirements that the County will use to facilitate the payment and reimbursement process for the segments of infrastructure to be constructed with proceeds. Funds will be used by the County to purchase segments of infrastructure as they are completed.

Our underwriting fee for this transaction shall be \$3,500. Additionally, the County will be required to compensate BB&T's legal review counsel.

All applicable taxes, permits, costs of lawyers for the County and any other costs shall be the County's responsibility and separately payable by the County.



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**STATE OF SOUTH CAROLINA  
OCONEE COUNTY  
ORDINANCE NO. 2010-06**

A FIRST SUPPLEMENTAL ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF A \$3,500,000 SPECIAL SOURCE REVENUE BOND, SERIES 2010, OF OCONEE COUNTY, SOUTH CAROLINA; PRESCRIBING THE FORM AND DETAILS OF SUCH BOND; PROVIDING FOR THE PAYMENT OF THE BOND AND THE DISPOSITION OF THE PROCEEDS THEREOF; AND OTHER MATTERS RELATING THERETO.

Enacted: May 4, 2010

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BE IT ORDAINED, BY THE COUNTY COUNCIL OF OCONEE COUNTY, SOUTH CAROLINA, IN COUNCIL ASSEMBLED:

Section 1. Definitions. The terms in this Section 1 and all words and terms defined in General Bond Ordinance No. 2010-05 enacted by Council on May 4, 2010 (the "General Bond Ordinance"), shall for all purposes of this First Supplemental Ordinance No. 2010-06 have the respective meanings given to them in the General Bond Ordinance and in Section 1 hereof. The following terms as used in this First Supplemental Ordinance shall, unless the context requires otherwise, have the following meanings:

"2010 Projects" shall mean the Costs of Acquisition and Construction of one or more of the projects identified in Exhibit A attached hereto and incorporated herein by reference.

"Code" shall mean the Internal Revenue Code of 1986, as amended.

"Construction Fund of 2010" shall mean the fund of that name established pursuant to Section 7 herein.

"Custodian" shall mean Branch Banking and Trust Company, as Custodian of the Construction Fund of 2010.

"Debt Service Fund of 2010" shall mean the fund of that name established pursuant to Section 5 herein.

"First Supplemental Ordinance" shall mean this First Supplemental Ordinance No. 2010-06.

"Interest Payment Date" shall mean April 1 of each year, commencing April 1, 2011.

"Paying Agent" shall mean U.S. Bank National Association, as Paying Agent for the Series 2010 Bond.

"Principal Payment Date" shall mean April 1 of each year, commencing April 1, 2012 and ending April 1, 2025.

"Purchaser" shall mean Branch Banking and Trust Company.

"Registrar" shall mean U.S. Bank National Association, as Registrar for the Series 2010 Bond.

"Series 2010 Bond" shall mean the Oconee County, South Carolina, Special Source Revenue Bond in the aggregate principal amount of \$3,500,000 authorized to be issued hereunder.



Section 2. Certain Findings and Determinations. The Council hereby finds and determines:

(a) This First Supplemental Ordinance supplements the General Bond Ordinance, constitutes and is a "Supplemental Ordinance" within the meaning of such quoted term as defined and used in the General Bond Ordinance, and is enacted under and pursuant to the General Bond Ordinance.

(b) The Series 2010 Bond constitutes and is a "Bond" as defined and used in the General Bond Ordinance.

(c) The Pledged Revenues pledged under the General Bond Ordinance and this First Supplemental Ordinance are not encumbered by any pledge thereof, other than the pledge thereof created by the General Bond Ordinance and this First Supplemental Ordinance for payment and security of the Series 2010 Bond.

(d) There does not exist an Event of Default, nor does there exist any condition which, after the passage of time or the giving of notice, or both, would constitute such Event of Default.

(e) The Series 2010 Bond is being issued for the purposes of paying a portion of the Costs of Acquisition and Construction of the 2010 Projects and Costs of Issuance of the Series 2010 Bond. The estimated Costs of Acquisition and Construction of the 2010 Projects and Costs of Issuance of the Series 2010 Bond are not less than \$3,500,000 to be financed in part with the proceeds of the Series 2010 Bond.

(f) The Purchaser has offered to purchase the Series 2010 Bond at a rate of interest of 4.60% per annum. A copy of the Purchaser's proposal is attached hereto as Exhibit B.

(g) The proceeds of the Series 2010 Bond shall be used to: (1) defray the Costs of Acquisition and Construction of the 2010 Projects; and (2) pay Costs of Issuance of the Series 2010 Bond.

(h) It is necessary and in the best interest of the County to issue the Series 2010 Bond in the aggregate principal amount of \$3,500,000 in accordance with the Act, the General Bond Ordinance and this First Supplemental Ordinance for the purposes set forth above.

Section 3. Authorization and Details of Series 2010 Bond; Delegation of Authority to Determine Certain Matters Relating to the Series 2010 Bond.

(a) There is hereby authorized to be issued a special source revenue bond designated "Oconee County, South Carolina, Special Source Revenue Bond, Series 2010", in the





principal amount of \$3,500,000. The proceeds of the Series 2010 Bond shall be used for the purposes set forth in Section 2(g) above.

(b) The offer of the Purchaser to purchase the Series 2010 Bond at a price of par and an interest rate of 4.60% per annum is hereby accepted. The County Administrator is hereby authorized and directed to accept the offer of the Purchaser and deliver such acceptance to the Purchaser. In the event of a conflict in the terms and provisions of such offer and this First Supplemental Ordinance, the terms and provisions of this First Supplemental Ordinance shall prevail.

Upon the occurrence of any Rate Adjustment Event (as defined below) with respect to the Series 2010 Bond, the interest rate shall be recalculated to an interest rate equal to the Prime Rate (as defined below) plus two percent (2%) per annum, to the date (retroactively if need be) determined as a result of the Rate Adjustment Event to be the date interest on the Series 2010 Bond became includable in the Purchaser's gross income for federal income tax purposes.

"Prime Rate" shall mean that rate of interest so denominated and set by the Purchaser from time to time as an interest rate basis for borrowings. The Prime Rate is but one of several interest rate bases used by the Purchaser, which lends at rates above and below the Prime Rate. For purposes of calculating any interest rate hereunder which is based on the Prime Rate, such interest rate shall be adjusted automatically on the effective date of any change in the Prime Rate.

"Rate Adjustment Event" shall mean any action by the Internal Revenue Service (including the delivery of a deficiency notice) or any other federal court or administrative body determining, as a result of any misrepresentation by the County or as a result of any action the County takes or fails to take, that interest on the Series 2010 Bond, or any portion thereof, is includable in the Purchaser's gross income for federal income tax purposes.

In the event that the Series 2010 Bond is subsequently determined not to be a "qualified tax-exempt obligation" under Section 265(b)(3) of the Code, the interest rate on the Series 2010 Bond shall be reset to 5.0% retroactive to the date of issuance. In such case, interest due retroactively on the Series 2010 Bond shall be due upon demand by the Purchaser.

(c) The Series 2010 Bond shall be represented by a single, fully registered bond; shall be registered in the name of the Purchaser; shall be dated the date of delivery; and shall be in the principal amount of \$3,500,000. Interest on the unpaid principal amount of the Series 2010 Bond shall be payable on April 1 of each year commencing April 1, 2011 until its maturity or prior redemption. The Series 2010 Bond shall be payable annually in principal installments on April 1 of each year, commencing April 1, 2012, in the years and in the principal amounts as set forth in the table below. Interest on the Series 2010 Bond shall be calculated on the basis of a 360-day year comprising twelve 30-day months.



The Series 2010 Bond will be payable on April 1 in each of the years and in the principal amounts as follows:

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2012	\$180,000	2019	\$250,000
2013	190,000	2020	265,000
2014	195,000	2021	280,000
2015	205,000	2022	290,000
2016	215,000	2023	305,000
2017	230,000	2024	320,000
2018	240,000	2025	335,000

The Chairman or Vice-Chairman of County Council and the County Administrator are authorized to adjust the principal payment schedule set forth above, provided the Series 2010 Bond shall not be issued in an aggregate principal amount which exceeds \$3,500,000, and its final maturity shall not extend beyond April 1, 2025.

The Series 2010 Bond, and the interest thereon, is a special obligation of the County payable solely from, and secured by a pledge of the Pledged Revenues. The Series 2010 Bond, and the interest thereon are, (a) payable solely from all or a specifically described portion of the Pledged Revenues retained by the County; (b) not secured by, or in any way entitled to, a pledge of the full faith, credit, or taxing power of the County; (c) not an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation but is payable solely from a special source that does not include revenues from any tax or license; and (d) not a pecuniary liability of the County or a charge against the County's general credit or taxing power.

(d) The Chairman or Vice-Chairman of the Council and the County Administrator are empowered to include any additional provisions in the Series 2010 Bond as requested by the Purchaser in accordance with its proposal to purchase the Series 2010 Bond.

(e) The Council hereby authorizes and directs the Chairman or Vice-Chairman of the Council to execute the Series 2010 Bond in the name of the County, and authorizes and directs the Clerk to the Council to attest the manual signature of the Chairman or Vice-Chairman of the Council under the seal of the County impressed, imprinted or reproduced thereon.

(f) The Series 2010 Bond shall originally be dated its date of initial issuance and shall be issued as a fully registered Bond in substantially the form set forth as Exhibit C hereto.





Section 4. Optional Redemption of Series 2010 Bond. Unless otherwise agreed to by the Chairman of County Council, the principal amounts of the Series 2010 Bond are subject to redemption in whole, but not in part, prior to their maturity on any April 1 with a prepayment penalty equal to one percent of the remaining principal outstanding. In the event the Series 2010 Bond is called for redemption, the County shall give notice of redemption of the Series 2010 Bond by first-class mail, postage prepaid, to the registered owner thereof as shown on the Books of Registry of the County not less than ten (10) days prior to the date fixed for the redemption thereof.

Section 5. Establishment of Debt Service Fund of 2010. In accordance with Section 6.6 of the General Bond Ordinance, the Debt Service Fund of 2010 is hereby directed to be established with the Trustee for the Series 2010 Bond on the date of original delivery of the Series 2010 Bond for the benefit of the Purchaser of the Series 2010 Bond. In addition, there is hereby directed to be established within the Debt Service Fund of 2010 an Interest Account and a Principal Account for the payment of interest and principal, respectively, on the Series 2010 Bond as the same become due and payable. The payments from the Pledged Revenues authorized herein shall be made at the times set forth in Section 6.6 of the General Bond Ordinance.

Section 6. Payment of the Series 2010 Bond. The Series 2010 Bond is secured by a pledge of the Pledged Revenues referred to and subject to the limitations set forth in Section 6.3 of the General Bond Ordinance, and shall be subject to no prior liens or encumbrances other than as provided under the General Bond Ordinance and this First Supplemental Ordinance. Both the principal of and interest on the Series 2010 Bond are payable at the principal office of the Paying Agent without presentation and surrender of the Series 2010 Bond in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts; provided, however, the Purchaser shall surrender the Series 2010 Bond to the County on or within a reasonable time after its final maturity.

Section 7. Construction Fund of 2010. There is hereby created and established the Construction Fund of 2010 which fund shall be held by the Custodian. Payments from the Construction Fund of 2010 shall be made by the Custodian only upon receipt of requisition in the form attached hereto as Exhibit D, or as otherwise required by the Custodian, signed by an Authorized County Representative, stating, with respect to each payment for 2010 Projects:

- (a) The amount to be paid;
- (b) The nature and purpose of the obligation for which such payment is requested;
- (c) The person, firm or corporation to whom such obligation is owed or to whom a reimbursable advance has been made;
- (d) That such obligation is a proper payment under the Series 2010 Bond and has not been the basis of any previous advance;



(e) That the County has not received notice of any mechanic's, materialmen's or other liens or right to liens or other obligations (other than those being contested in good faith) which should be satisfied or discharged before payment of such obligation is made; and

Upon written direction to the Custodian by an Authorized County Representative, moneys in the Construction Fund of 2010 may also be expended for Costs of Issuance.

In making any such payment from the Construction Fund of 2010, the Custodian may rely on such directions, requisitions and certifications delivered to it pursuant to this Section 7 and the Custodian shall not have any liability with respect to making such payments in accordance with such directions, requisitions and certifications for any liability with respect to the proper application thereof by the County.

Section 8. Disposition of Proceeds of Series 2010 Bond. The proceeds derived from the sale of the Series 2010 Bond shall be deposited with the Custodian for deposit in the Construction Fund of 2010 and used to pay the Costs of Acquisition and Construction of the 2010 Projects and to pay Costs of Issuance.

Section 9. Federal Tax Covenants. The County hereby covenants and agrees with the Purchaser that it will not take any action which will, or fail to take any action which failure will, cause interest such Bond to become includable in the gross income of the Purchaser for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of such Bond. The County further covenants and agrees with the Purchaser that no use of the proceeds of the Series 2010 Bond shall be made which, if such use had been reasonably expected on the date of issue of such Bond would have caused such Bond to be "arbitrage bonds," as defined in the Code; and to that end the County shall:

(a) Comply with the applicable provisions of Section 103 and Sections 141 through 150 of the Code and any regulations promulgated thereunder so long as such Bond is Outstanding;

(b) Establish such funds, make such calculations and pay such amounts, if necessary, in the manner and at the times required in order to comply with the requirements of the Code relating to required rebates of certain amounts to the United States; and

(c) Make such reports of such information at the times and places required by the Code.

Section 10. Bank Qualified. The County covenants that, in accordance with the provisions of the Code, the Series 2010 Bond is designated as a "qualified tax-exempt obligation" as defined in Section 265 of the Code. The County and all subordinate entities thereof do not anticipate issuing more than \$30,000,000 (exclusive of tax-exempt bonds or other obligations which are not included in the \$30,000,000 limitation under the applicable provisions of Section 265 of the Code) in tax-exempt bonds or other tax-exempt obligations in calendar year 2010 (other than private



activity bonds which are "qualified 501(c)(3) bonds" as defined in the Code). The County represents that the sum of all tax-exempt obligations (other than tax-exempt bonds or other obligations not included in the \$30,000,000 limitation under the applicable provisions of Section 265 of the Code and private activity bonds) issued by the County and all subordinate entities thereof during calendar year 2010 is not reasonably expected to exceed \$30,000,000.

Section 11. Filings with Central Repository. In compliance with Section 11-1-85 of the South Carolina Code, the County covenants, so long as and to the extent required pursuant to Section 11-1-85, that it will file or cause to be filed with a central repository for availability in the secondary bond market when requested: (a) a copy of an annual independent audit of the County within thirty (30) days of the County's receipt thereof; and (b) event-specific information within thirty (30) days of the County's receipt of the audit affecting more than five percent (5%) of the Pledged Revenues, or the County's tax base.

The only remedy for failure by the County to comply with the covenant of this paragraph shall be an action for specific performance of this covenant; and failure to comply shall not constitute a default or an "Event of Default" under the Ordinance or this First Supplemental Ordinance. The County specifically reserves the right to amend or delete this covenant to reflect any change in Section 11-1-85 without the consent of any Bondholder.

Section 12. Further Actions. The Chairman of the Council, Vice-Chairman of the Council, County Administrator, Assistant County Administrator for Administrative and Finance, Clerk to Council, County Attorney, and all other officers and employees of the County are hereby authorized and directed to take any and all such further actions as shall be deemed necessary or desirable in order to effectuate issuance of the Series 2010 Bond and to carry out the intentions of this First Supplemental Ordinance.

Section 13. Designation of Custodian. Branch Banking and Trust Company is hereby designated as the Custodian of the Construction Fund of 2010. The Custodian shall signify its acceptance of its duties upon delivery of the Series 2010 Bond.

Section 14. Section Headings. The headings and titles of the several sections hereof shall be solely for convenience of reference and shall not affect the meaning, construction, interpretation or effect of this First Supplemental Ordinance.

Section 15. Repeal of Inconsistent Ordinances and Resolutions. All ordinances and resolutions of the County, and any part of any ordinance or resolution, inconsistent with this First Supplemental Ordinance are hereby repealed to the extent of such inconsistency.

Section 16. Effective Date. This First Supplemental Ordinance shall become effective upon its enactment.

[Execution follows on next page]





Enacted by the County Council of Oconee County, South Carolina, this 4<sup>th</sup> day of May, 2010.

OCONEE COUNTY, SOUTH CAROLINA

(SEAL)

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Chairman, County Council  
Oconee County, South Carolina

ATTEST:

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Administrator, Oconee County, South Carolina

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Clerk to County Council,  
Oconee County, South Carolina

Date of First Reading: February 16, 2010  
Date of Second Reading: April 6, 2010  
Date of Public Hearing: April 20, 2010  
Date of Third Reading: May 4, 2010

[Execution Page]



## EXHIBIT A

### 2010 PROJECTS

The following projects or activities undertaken in the Highpointe/PointeWest Park:

#### Land acquisition

##### Construction - Site Preparation

Environmental Engineering/VCC Remaining

Environmental Remediation

Strip and Spread Topsoil

Excavate, Place and Compact Material

Fine Grade Mass Graded Area

Grassing Mass Graded Area

##### Infrastructure

Remaining Demolition

Staking for Grading and Storm Drainage

Clearing and Grubbing

Rough Grading

Fine Grading for Roads and Curbs

Temporary Sediment Traps

Storm Drainage Design and Construction

Sediment Ponds

Erosion Control Allowance

Paving Design and Construction

Roll Curbs Including Staking

4' Sidewalks (one side)

##### Professional Services

Architects/Design Consultants





EXHIBIT B

PROPOSAL OF PURCHASER



P.O. Box 714  
Columbia, S.C. 29202  
(803) 251-1328  
Fax (803) 251-1329

May 3, 2010

Ms. Kendra Brown  
Asst. Co. Administrator  
Oconee County  
415 S. Pine St.  
Walhalla, SC 29691

Dear Ms. Brown:

Branch Banking and Trust Company ("BB&T"), is pleased to offer this proposal for the financing requested by Oconee County ("County").

- (1) **Project:** Special Source Revenue Bond, Series 2010
- (2) **Amount To Be Financed:** \$3,500,000 (not to exceed)
- (3) **Interest Rates, Financing Terms:**

We offer a fixed interest rate of 4.60% for a bond with a term of fifteen years. This rate will be fixed for the full term.

Security for the bond shall be in the form of the following: (a) a pledge of revenues equivalent to fifteen percent of the total fee in lieu of tax revenues derived from existing county industrial properties that have a multi county park designation; and (b) a pledge of 99 percent of all property taxes and/or fee in lieu of tax revenues related to the Highpointe and Pointe West developments located in a multi county park.

The Bond shall be prepayable in whole upon any scheduled payment date with a prepayment penalty equivalent to one percent of the remaining principal. BB&T must approve of any amortization schedules used in the transaction. BB&T envisions a payment schedule with approximately level debt service after an interest only payment on April 1, 2011.

Upon closing, the transaction will be fully funded with the proceeds deposited in a project fund with BB&T Governmental Finance. BB&T must approve of the funding requirements that the County will use to facilitate the payment and reimbursement process for the segments of infrastructure to be constructed with proceeds. Funds will be used by the County to purchase segments of infrastructure as they are completed.

Our underwriting fee for this transaction shall be \$3,500. Additionally, the County will be required to compensate BB&T's legal review counsel.

All applicable taxes, permits, costs of lawyers for the County and any other costs shall be the County's responsibility and separately payable by the County.



The interest rate stated above is valid for a closing not later than 45 days after today. Closing of the financing is contingent upon completing documentation acceptable to BB&T.

The stated interest rate assumes that the County expects to borrow less than \$30,000,000 in calendar year 2010 and that the County shall comply with IRS Code Sections 140, 141, 148 and 149(e). BB&T reserves the right to terminate its interest in this bid or to negotiate a mutually acceptable rate if the financing is not qualified tax-exempt financing.

**(4) Financing Documents:**

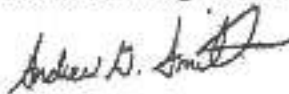
It will be the responsibility of the County to retain and compensate bond counsel to appropriately structure the transaction. All documentation must be deemed appropriate by BB&T.

BB&T shall have the right to cancel this offer by notifying the County of its election to do so (whether or not this offer has previously been accepted by the County) if at any time prior to the closing there is a material adverse change in the County's financial condition, if we discover adverse circumstances of which we are currently unaware, if we are unable to agree on acceptable documentation with the County or if there is a change in law (or proposed change in law) that changes the economic effect of this financing to BB&T. We reserve the right to negotiate and/or terminate our interest in this transaction should we be the successful proposer.

Please call me at 803-251-1328 with your questions and comments. We look forward to hearing from you.

Sincerely,

Branch Banking and Trust Company



Andrew G. Smith  
Senior Vice President





EXHIBIT C

(FORM OF BOND)

UNITED STATES OF AMERICA  
STATE OF SOUTH CAROLINA  
OCONEE COUNTY  
SPECIAL SOURCE REVENUE BOND  
SERIES 2010

Amount  
\$3,500,000.00

Oconee County, South Carolina (the "County"), is justly indebted and, for value received, hereby promises to pay to Branch Banking and Trust Company (the "Holder") or its registered assigns, but solely from the special source hereinafter mentioned, and not otherwise, a principal amount of \$3,500,000, together with interest on the principal amount hereof from time to time unpaid at the rate of 4.60% per annum (calculated on the basis of a 360-day year of twelve 30-day months), but solely from such special source and not otherwise, until this Bond matures. Interest on this Bond is payable on April 1 of each year commencing April 1, 2011 until its maturity or prior redemption, and shall be payable to the Holder by check or draft mailed to the person in whose name this Bond is registered on the registration books of the County maintained by U.S. Bank National Association, as registrar (the "Registrar") in Columbia, South Carolina.

This Bond, and the interest hereon is, (a) payable solely from all or a specifically described portion of the Pledged Revenues (as defined in the General Bond Ordinance described below) retained by the County; (b) not secured by, or in any way entitled to, a pledge of the full faith, credit, or taxing power of the County; (c) not an indebtedness of the County within the meaning of any state constitutional provision or statutory limitation but is payable solely from a special source that does not include revenues from any tax or license; and (d) not a pecuniary liability of the County or a charge against the County's general credit or taxing power.

This Bond is payable as to principal on April 1 in each of the years and in the principal amounts as follows:

<u>Year</u>	<u>Principal Amount</u>	<u>Year</u>	<u>Principal Amount</u>
2012	\$180,000	2019	\$250,000
2013	190,000	2020	265,000
2014	195,000	2021	280,000
2015	205,000	2022	290,000
2016	215,000	2023	305,000
2017	230,000	2024	320,000
2018	240,000	2025	335,000



Upon the occurrence of any Rate Adjustment Event (as defined below) with respect to this Bond, the interest rate shall be recalculated to an interest rate equal to the Prime Rate (as defined below) plus two percent (2%) per annum, to the date (retroactively if need be) determined as a result of the Rate Adjustment Event to be the date interest on this Bond became includable in the Holder's gross income for federal income tax purposes.

"Prime Rate" shall mean that rate of interest so denominated and set by the Holder from time to time as an interest rate basis for borrowings. The Prime Rate is but one of several interest rate bases used by the Holder, which lends at rates above and below the Prime Rate. For purposes of calculating any interest rate hereunder which is based on the Prime Rate, such interest rate shall be adjusted automatically on the effective date of any change in the Prime Rate.

"Rate Adjustment Event" shall mean any action by the Internal Revenue Service (including the delivery of a deficiency notice) or any other federal court or administrative body determining, as a result of any misrepresentation by the County or as a result of any action the County takes or fails to take, that interest on this Bond, or any portion thereof, is includable in the Holder's gross income for federal income tax purposes.

In the event that this Bond is subsequently determined not to be a "qualified tax-exempt obligation" under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended, the interest rate on this Bond shall be reset to 5.0% retroactive to the date of issuance. In such case, interest due retroactively on this Bond shall be due upon demand by the Holder.

The principal amounts of this Bond are subject to redemption in whole, but not in part, prior to their maturity on any April 1 with a prepayment penalty equal to one percent of the remaining principal outstanding. In the event this Bond is called for redemption, the County shall give notice of redemption by first-class mail, postage prepaid, to the registered owner thereof as shown on the books of registry of the County not less than ten (10) days prior to the date fixed for the redemption thereof.

Both the principal of and interest on this Bond are payable at the principal office of U.S. Bank National Association, without presentation and surrender of this Bond in any coin or currency of the United States of America which is, at the time of payment, legal tender for public and private debts; provided, however, the Holder agrees to surrender this Bond on or within a reasonable time after its final maturity.

This Bond is issued by the County for the purposes of defraying the Costs of Acquisition and Construction of the 2010 Projects and Costs of Issuance (as such terms are defined in the Ordinances hereafter mentioned). This Bond is authorized to be issued and is issued under, pursuant to and in full compliance with the Constitution and statutes of the State of South Carolina, including particularly Section 4-1-175 and Section 4-29-68 of the Code of Laws of South Carolina 1976, as amended (the "Act"). This Bond is also authorized to be issued and is issued under and pursuant to General Bond Ordinance No. 2010-05 of the County Council of Oconee County duly enacted on May 4, 2010 (the "General Bond Ordinance"), and First Supplemental Ordinance No. 2010-06 of the County Council of Oconee County duly enacted on May 4, 2010 (the "First Supplemental Ordinance" and, together with the General Bond Ordinance, the "Ordinances"), under the Act, which Ordinances have been duly codified and indexed as prescribed by law.





This Bond, including interest thereon, is payable solely from a portion of the Pledged Revenues and is secured equally and ratably by a pledge of the Pledged Revenues and certain funds and accounts established under the Ordinances with respect thereto heretofore mentioned which are pledged to the payment thereof, and the County is under no obligation to pay the same except from such sources. Bonds on a parity with this Bond may hereafter be issued under terms and conditions set forth in the General Bond Ordinance. Such Bonds shall be equally and ratably secured with the pledge of the Pledged Revenues.

The Ordinances contain provisions defining terms; set forth the sources of payment for the principal of and interest on this Bond; set forth the Pledged Revenues pledged for the payment of the principal of and interest on this Bond and the Bonds of other series herewith which may hereafter be issued on a parity herewith under the General Bond Ordinance; set forth the nature, extent and manner of enforcement of the security of this Bond and of such pledge, and the rights and remedies of the holder hereof with respect thereto; set forth the terms and conditions upon which this Bond is issued and upon which other bonds may be hereinafter issued payable as to principal, premium, if any, and interest on a parity with this Bond and equally and ratably secured herewith; sets forth the rights, duties and obligations of the County thereunder; and set forth the terms and conditions upon which the pledge made in the General Bond Ordinance for the security of this Bond and upon which the covenants, agreements and other obligations of the County made therein may be discharged at or prior to the maturity or redemption of this Bond with provisions for the payment thereof in the manner set forth in the General Bond Ordinance. Reference is hereby made to the Ordinances to all of the provisions of which any holder of this Bond by the acceptance hereof thereby assents.



IN WITNESS WHEREOF, Oconee County, South Carolina, has caused this Bond to be executed in its name by the manual signature of the Chairman/Vice-Chairman of the County Council and attested by the Clerk to the County Council under the seal of the County, this Bond to be dated the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

OCONEE COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Chairman/Vice-Chairman, County Council  
Oconee County, South Carolina

(SEAL)

ATTEST:

\_\_\_\_\_  
Clerk to County Council  
Oconee County, South Carolina

REGISTRATION

This Bond is one of the Bonds described in the within-mentioned Ordinances of Oconee County, South Carolina.

U.S. BANK NATIONAL ASSOCIATION,  
as Registrar

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Officer



EXHIBIT D

FORM OF REQUISITION

NO. \_\_\_\_\_

TO:

**THIS IS TO CERTIFY:**

With regard to the First Supplemental Ordinance No. 2010-06 enacted on May 4, 2010, authorizing the issuance of the County's \$3,500,000 Special Source Revenue Bond, Series 2010, the following information is submitted with respect to the costs of the 2010 Projects (as defined in the First Supplemental Ordinance) or costs of issuance:

- A. Payment should be made by a deposit to C/A# \_\_\_\_\_ or a check issued to the person, firm or corporation on the attached schedule.
1. The amount to be paid: \$ \_\_\_\_\_.
  2. The nature and purpose of the obligation for which payment is requested is set forth on the attached schedule, and a bill or statement of account for such obligation is also attached hereto.
  3. The person, firm or corporation to whom such obligation is owed or to whom a reimbursable advance has been made is also set forth on the attached schedule.
  4. This obligation has been properly incurred and is a proper charge against the Construction Fund of 2010 and has not been the basis of any previous withdrawal.
  5. The County has not received notice of any mechanic's, materialmen's or other liens or right to liens or other obligations (other than those being contested in good faith) which should be satisfied or discharged before payment of such obligation is made.

OCONEE COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Authorized County Representative

\_\_\_\_\_, 20\_\_\_\_





**STATE OF SOUTH CAROLINA  
OCONEE COUNTY  
ORDINANCE NO. 2010-07**

**AN ORDINANCE TO DEVELOP A JOINT COUNTY BUSINESS PARK IN CONJUNCTION WITH PICKENS COUNTY, SOUTH CAROLINA ("PICKENS COUNTY"), SUCH BUSINESS PARK TO BE GEOGRAPHICALLY LOCATED IN OCONEE COUNTY, SOUTH CAROLINA ("OCONEE COUNTY") AND ESTABLISHED PURSUANT TO ARTICLE VIII, SECTION 13 OF THE SOUTH CAROLINA CONSTITUTION, AND SOUTH CAROLINA CODE OF LAWS OF 1976 §4-1-170, ET SEQUITUR, AS AMENDED; TO PROVIDE FOR A WRITTEN AGREEMENT WITH PICKENS COUNTY PROVIDING FOR THE PAYMENT OF EXPENSES OF THE PARK, THE PERCENTAGE OF REVENUE APPLICATION, AND THE DISTRIBUTION OF FEES-IN-LIEU OF *AD VALOREM* TAXES TO OCONEE COUNTY, PICKENS COUNTY AND RELEVANT TAXING ENTITIES; TO PROVIDE THAT JOBS TAX CREDITS ALLOWED BY LAW BE PROVIDED FOR BUSINESSES LOCATING IN SAID PARK; TO PERMIT A USER FEE-IN-LIEU OF *AD VALOREM* TAXATION WITHIN SAID PARK; AND OTHER MATTERS RELATED THERETO.**

**WHEREAS**, Oconee County, South Carolina ("Oconee County") and Pickens County, South Carolina ("Pickens County," and Oconee County and Pickens County jointly, the "Counties") are authorized under Article VIII, Section 13 of the South Carolina Constitution to jointly develop business parks within the geographical boundaries of one or more of the member counties; and

**WHEREAS**, in order to promote the economic welfare of the citizens of the Counties by providing employment and other benefits to the citizens of the Counties and promoting economic development in, and enhancing the tax base of the Counties, Oconee County proposes to enter into an agreement with Pickens County to develop jointly a business park wholly within Oconee County, as provided by Article VIII, Section 13 of the South Carolina Constitution and in accordance with Section 4-1-170 of the Code of Laws of South Carolina, 1976, as amended, (the "Act").

NOW, THEREFORE, BE IT ORDAINED BY THE OCONEE COUNTY COUNCIL:

**Section 1:** Oconee County is hereby authorized to execute and deliver a written agreement to jointly develop a business park (the "Park") with Pickens County. The Park is to be located within the boundaries of Oconee County. The form of the Agreement for Development of Joint County Business Park (the "Agreement") presented to the County Council of Oconee County ("Oconee County Council") and filed with the minutes of the meeting of the Oconee County Council and all terms of the Agreement are hereby incorporated herein. The form, terms and provisions of the Agreement presented to this meeting and filed with the Clerk to Oconee County Council be and they are hereby approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Agreement were set out in this Ordinance in its



entirety. The Chairman of the Oconee County Council, and the Administrator of Oconee County be and they are hereby authorized, empowered and directed to execute, acknowledge and deliver the Agreement in the name and on behalf of Oconee County. The Agreement is to be in substantially the form now before this meeting and hereby approved, or with such minor changes therein as shall be approved by the officials of Oconee County executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Agreement now before this meeting.

**Section 2.** The maximum tax credits allowable by South Carolina Code of Laws of 1976, Section 12-6-3360, as amended, will apply to any business enterprise locating in the Park.

**Section 3.** A fee-in-lieu of *ad valorem* taxes as provided for in the Agreement, Article VIII Section 13 of the South Carolina Constitution, the Act and/or Titles 4 or 12 of the South Carolina Code of Laws 1976, as amended, shall be paid by or on behalf of the owners of any property located in the Park. The fee paid in-lieu of *ad valorem* taxes shall be paid to the Oconee County Treasurer. Within 15 business days following the end of the calendar quarter of its receipt of the fee paid in-lieu of *ad valorem* taxes, the Oconee County Treasurer shall pay a portion of the user fees to the Pickens County Treasurer pursuant to the terms of the Agreement. Payments of fees-in-lieu of *ad valorem* taxes shall be made on or before the due date for taxes for a particular year. Penalties for late payment will be at the same rate and at the same times as for late tax payment. Any late payment beyond said date will accrue interest at the rate of statutory judgment interest. The Counties, acting by and through the county tax collector for Oconee County, shall maintain all liens and rights to foreclose upon liens provided for counties in the collection of *ad valorem* taxes.

**Section 4.** The administration, development, promotion, and operation of the Park shall be the responsibility of Oconee County, provided, that to the extent any Park premises is owned by a private party, the private party shall be responsible for development expenses as contained in the Agreement.

**Section 5.** In order to avoid any conflict of laws or ordinances between the Counties, Oconee County ordinances will be the reference for such regulations or laws in connection with the Park. Nothing herein shall be taken to supersede any state or federal law or regulation.

**Section 6.** The public safety officials which serve the Park shall be those which would otherwise normally provide such services in the geographic area within which the Park is located.

**Section 7.** Should any section of this Ordinance be, for any reason, held void or invalid, it shall not affect the validity of any other section hereof which is not itself void or invalid.

**Section 8.** The Agreement may not be terminated except by concurrent ordinances of Oconee County Council and the County Council of Pickens County, in accordance with the terms of the Agreement.

**Section 9.** Oconee County hereby designates that the distribution of the fee-in-lieu of *ad valorem* taxes pursuant to the Agreement received and retained by Oconee County for Park premises, including payment of the partner county fee (1% to Pickens County), shall be as directed









by the Agreement, provided that Oconee County may, from time to time, by ordinance, amend the distribution of the fee-in-lieu of tax payments to all taxing entities. All or a portion of the fee-in-lieu of taxes which Oconee County receives and retains pursuant to the Agreement or pursuant to an ordinance that provides for the distribution thereof may be, from time to time and by ordinance of Oconee County Council or its successor, designated for the payment of special source revenue bonds under Section 4-29-68, Code of Laws of South Carolina 1976, as amended.

**Section 10.** This Ordinance shall be effective after third and final reading and approval by Oconee County Council

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WITNESS our hands and seals this 4<sup>th</sup> day of May, 2010.

OCONEE COUNTY, SOUTH CAROLINA

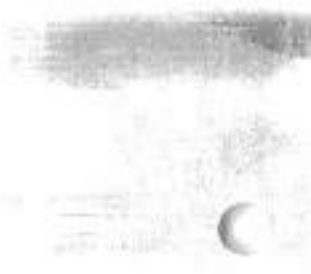
BY: \_\_\_\_\_  
Chairman, County Council,  
Oconee County, South Carolina

BY: \_\_\_\_\_  
Administrator  
Oconee County, South Carolina

ATTEST:

BY: \_\_\_\_\_  
Clerk to County Council  
Oconee County, South Carolina

First Reading: February 16, 2010  
Second Reading: April 6, 2010  
Public Hearing: April 20, 2010  
Third Reading: May 4, 2010



100



STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF OCONEE            )  
  )  
COUNTY OF PICKENS          )

AGREEMENT FOR DEVELOPMENT OF  
JOINT COUNTY BUSINESS PARK

**THIS AGREEMENT** (the "Agreement") for the development of a joint county business park to be located in Oconee County, South Carolina, dated as of May 4, 2010 is made and entered into by and between Oconee County, South Carolina ("Oconee County") and Pickens County, South Carolina ("Pickens County") (Oconee County and Pickens County jointly, the "Counties"), both political subdivisions of the State of South Carolina.

### RECITALS

**WHEREAS**, the Counties have determined that, in order to promote economic development and thus provide additional employment opportunities within the Counties, and to increase the tax base of Oconee County, there should be established in Oconee County a Joint County Business Park (the "Park"), which Park shall be in addition to all previous Joint County Business Parks previously established between the Counties; and

**WHEREAS**, as a consequence of the establishment of the Park, property therein shall be exempt from *ad valorem* taxation, during the term of this Agreement, but the owners or lessees of such property shall pay annual fees during that term in an amount equal to that amount of *ad valorem* taxes for which such owner or lessee would be liable except for such exemption.

**NOW, THEREFORE**, in consideration of the mutual agreement, representations and benefits contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **Binding Agreement.** This Agreement serves as a written instrument setting forth the entire agreement between the parties and shall be binding on the Counties, their successors and assigns.

2. **Authorization.** Article VIII, Section 13(d), of the Constitution of South Carolina provides that counties may jointly develop a business park with other counties within the geographical boundaries of one or more of the member counties, provided that certain conditions specified therein are met and further provided that the General Assembly of the State of South Carolina provides by law a means by which the value of property in such park will be considered for purposes of bonded indebtedness of political subdivisions and school districts and for purposes of computing the index of taxing ability for school districts. Section 4-1-170, Code of Laws of South Carolina, 1976, as amended ("Section 4-1-170"), satisfies the conditions imposed by Article VIII, Section 13(d), of the Constitution and provides the statutory vehicle whereby a joint county business park may be created.





3. **Location of the Park.**

(A) The Park consists of property located in Oconee County, as is hereinafter more specifically described in Exhibit A attached hereto. It is specifically recognized that the Park may from time to time consist of non-contiguous properties. The boundaries of the Park may be enlarged or diminished from time to time as authorized by ordinances of both of the Counties. Notwithstanding the foregoing, or anything contained in this Agreement or Exhibit A to the contrary, any portion of the real property taxed on an assessment equal to four percent (4%) of the fair market value of such property pursuant to Section 12-43-220(c), Code of Laws of South Carolina, 1976, as amended, shall not be included within or comprise any part of the Park during the fiscal years in which such property meets the qualifications of Section 12-43-220(c).

(B) In the event of any enlargement or diminution of the boundaries of the Park, this Agreement shall be deemed amended and there shall be attached hereto a revised Exhibit A which shall contain a legal description of the boundaries of the Park, as enlarged or diminished, together with a copy of the ordinances of the County Council of Oconee County ("Oconee County Council") and the County Council of Pickens County ("Pickens County Council") pursuant to which such enlargement or diminution was authorized.

(C) Prior to the adoption by Oconee County Council and by Pickens County Council of ordinances authorizing the diminution of the boundaries of the Park, a public hearing shall first be held by Oconee County Council. Notice of such public hearing shall be published in a newspaper of general circulation in Oconee County at least once and not less than fifteen (15) days prior to such hearing. Subsequent to the public hearing in Oconee County, a public hearing shall also be held in Pickens County, with Notice of such public hearing being published in a newspaper of general circulation in Pickens County at least once and not less than fifteen (15) days prior to such hearing.

(D) Notwithstanding anything in this Agreement to the contrary, to the extent there is at any time made a finally adjudicated finding or determination by a court of competent jurisdiction that inclusion of a type or class of property within the Park is violative of Section 4-1-170, the Constitution of the State of South Carolina or any other law of the State of South Carolina, then, without further action or amendment of this Agreement by the parties hereto, any property of such type or class previously included within the Park shall be deemed to have been immediately removed from the Park as of the date of such final adjudication, and all property of such type or class shall be excluded from the Park thereafter. To the extent that the foregoing provisions of this Subsection (D) do not cure said violation as found or determined by a court of competent jurisdiction with respect to a type or class of property included within or comprising a part of the Park, the parties hereto covenant and agree that this Agreement shall be deemed amended to the extent necessary to comply with the laws of the State of South Carolina and the Constitution of the State of South Carolina in accordance with such court's finally adjudicated finding or determination.

4. **Fee-in-Lieu of Taxes.** Property located in the Park shall be exempt from *ad valorem* taxation during the term of this Agreement. The owners or lessees of any property situated in the Park shall pay in accordance with and during the term of this Agreement an amount equivalent to the *ad*



equivalent to the *ad valorem* property taxes or other in-lieu of payments that would have been due and payable but for the location of such property within the Park. Where, in this Agreement, reference is made to payment of *ad valorem* property taxes or other in-lieu of payments, such reference shall be construed, in accordance with this Paragraph 4, to mean the *ad valorem* property taxes or other in-lieu of payments that would otherwise have been due to be paid to Oconee County, after deduction of all applicable allowances, credits, deductions, and exemptions authorized or required by state law.

5. **Allocation of Park Expenses.** The Counties shall bear expenses, including, but not limited to, development, operation, maintenance and promotion of the Park in the following proportions:

A.	Oconee County	100%
B.	Pickens County	0%

6. **Allocation of Park Revenues.** The Counties shall receive an allocation of all revenue generated by the Park through payment of fees-in-lieu of *ad valorem* property taxes or from any other source in the following proportions:

A.	Oconee County	99%
B.	Pickens County	1%

Any payment by Oconee County to Pickens County of its allocable share of the fees-in-lieu of taxes from the Park shall be made not later than fifteen (15) days from the end of the calendar quarter in which Oconee County receives such payment from the occupants of the Park. In the event that the payment made by any occupant of a Park is made under protest or is otherwise in dispute, Oconee County shall not be obligated to pay to Pickens County more than Pickens County's share of the undisputed portion thereof until thirty (30) days after the final resolution of such protest or dispute.

7. **Revenue Allocation Within Each County.** Revenues generated by the Park through the payment of fees-in-lieu of *ad valorem* property taxes shall be distributed to the Counties according to the proportions established by Paragraph 6. Revenues allocated to Oconee County shall be distributed as provided in Oconee County General Bond Ordinance No. 2010-05. Revenues allocated to Pickens County shall be distributed within Pickens County in the manner directed by Pickens County ordinance(s) relating thereto. Notwithstanding any provision contained herein to the contrary, Oconee County Council and Pickens County Council may otherwise direct the allocation of the revenues from the Park by ordinance, including, but not limited to, allocation of all or a portion of such revenues for the payment of special source revenue bonds under Section 4-29-68, Code of Laws of South Carolina 1976, as amended.

8. **Fees-in-Lieu of Taxes Pursuant to Code of Laws of South Carolina.** It is hereby agreed that the entry by Oconee County into any one or more negotiated fee-in-lieu of tax agreements pursuant to Titles 4 or 12, South Carolina Code, 1976, as amended, or any successor or comparable statutes, with respect to property located within the Park and the terms of such agreements shall be at the sole discretion of Oconee County.



9. **Assessed Valuation.** For the purpose of calculating the bonded indebtedness limitation of the Oconee Participating Taxing Entities and for the purpose of computing the index of taxpaying ability of the School District of Oconee County, South Carolina pursuant to Section 59-20-20(3), Code of Laws of South Carolina, 1976, as amended, allocation of the assessed value of property within the Park to Oconee County shall be identical to the percentage established for the allocation of revenue to Oconee County pursuant to Paragraphs 6 and 7 respectively, subject, however, to the provisions of Section 4-29-68(F) of the Code of Laws of South Carolina, 1976, or any successor legislation.

10. **Job Tax Credit Valuation.** For purposes of the job tax credit authorized by subsections of Section 12-6-3360, South Carolina Code of Laws, 1976, as amended ("Section 12-6-3360"), Oconee County is the county in which the permanent business enterprise is deemed to be located.

11. **Records.** The Counties covenant and agree that, upon the request of either, the other will provide to the requesting party copies of the records of the annual tax levy and copies of the actual tax bills, for parcels of property encompassed by this Agreement, and will further provide copies of the respective Counties' County Treasurer's collection records for the taxes so imposed, all as such records become available in the normal course of the Counties' procedures. It is further agreed that none of the parties shall request such records from any other party more frequently than once annually, absent compelling justification to the contrary.

13. **Severability.** In the event and to the extent (and only to the extent) that any provision or any part of a provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of that provision or any other provision or part of a provision of this Agreement.

14. **Termination.** Notwithstanding any provision of this Agreement to the contrary, the Counties agree that this Agreement may not be terminated by either party for a period of thirty-five (35) years commencing with the effective date hereof.

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SIGNATURE PAGES FOLLOW**





WITNESS our hands and seals this \_\_ day of \_\_\_\_\_, 2010.

OCONEE COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Chairman, County Council  
Oconee County, South Carolina

By: \_\_\_\_\_  
Administrator  
Oconee County, South Carolina

(SEAL)

ATTEST:

\_\_\_\_\_  
Clerk to County Council  
Oconee County, South Carolina



WITNESS our hands and seals this \_\_\_ day of \_\_\_\_\_, 2010.

PICKENS COUNTY, SOUTH CAROLINA

By:

\_\_\_\_\_  
Chairman, County Council  
Pickens County, South Carolina

By:

\_\_\_\_\_  
Administrator  
Pickens County, South Carolina

(SEAL)

ATTEST:

\_\_\_\_\_  
Clerk to County Council  
Pickens County, South Carolina



EXHIBIT A

To the Agreement for Development of  
Joint County Business Park between Oconee County,  
South Carolina and Pickens County, South Carolina  
Dated as of May 4, 2010

The Park is comprised of the following parcels:

All property in Oconee County, South Carolina located on the real property which, as of the date of this Agreement, bears the following Oconee County tax map number(s):

**271-00-01-005**  
**271-00-01-001**  
**271-00-01-004**  
**271-00-01-002**  
**271-00-01-003**

- including all property vertically or horizontally located on or within the Oconee County tax map numbers identified above, including, but not limited to, condominiums or other properties subject to any horizontal property regime, notwithstanding that such property may bears different Oconee County tax map numbers from those identified above; and
- excluding any portion of the real property located on or within the Oconee County tax map numbers identified above which is taxed on an assessment equal to four percent (4%) of the fair market value of such property pursuant to Section 12-43-220(c), Code of Laws of South Carolina, 1976, as amended, but only during the fiscal years in which such property meets the qualifications of Section 12-43-220(c).





STATE OF SOUTH CAROLINA  
COUNTY OF OCONEE  
**ORDINANCE 2010-18**

**AN ORDINANCE TO AUTHORIZE THE LEASING  
OF CERTAIN OCONEE COUNTY SPACE; AND  
OTHER MATTERS RELATED THERETO.**

**WHEREAS**, Oconee County, South Carolina (the "County"), is a body politic and corporate and a political subdivision of the State of South Carolina and is authorized by the provisions of Title 4, Chapter 9 of the Code of Laws of South Carolina, 1976, *as amended*, to sell, lease, or otherwise dispose of real property which is located within the County; and,

**WHEREAS**, the County currently owns the building located at 223 Kenneth Street, Walhalla, South Carolina 29691 (the "Building"), and the South Carolina Vocational Rehabilitation Department (the "Vocational Rehabilitation Department"), a department of the State of South Carolina, desires to lease five thousand usable square feet of the Building for storage; and,

**WHEREAS**, Oconee County Council hereby desires to enter into a lease agreement (the "Lease") with the Vocational Rehabilitation Department, such Lease being attached as Exhibit "A" and incorporated herein by reference, in accordance with the procedures set forth in this Ordinance.

**NOW, THEREFORE**, be it ordained by Oconee County Council in meeting duly assembled that:

1. The County hereby agrees to lease the Demised Premises (as identified in the Lease), to the Vocational Rehabilitation Department under the terms and conditions of the Lease.
2. The Oconee County Administrator, or his or her designee, is hereby authorized to negotiate minor changes to the terms and conditions of the Lease, so long as the final terms and conditions are not materially adverse to Oconee County and are substantially similar to the terms and conditions set forth in the Lease.
3. The Oconee County Administrator is hereby authorized and directed to execute the Lease, and to take all other steps and actions as are necessary or appropriate to lease the Demised Premises to the Vocational Rehabilitation Department.
4. Should any term, provision, or content of this ordinance be deemed unconstitutional or otherwise unenforceable by any court of competent jurisdiction, such determination shall have no effect on the remainder of this ordinance, all of which is hereby deemed separable.
5. All Ordinances, Orders, Resolutions, and actions of Oconee County Council inconsistent herewith are, to the extent of such inconsistency only, hereby repealed, revoked, and superseded.



6. This Ordinance shall become effective and be in full force and effect from and after the public hearing and the third reading in accordance with the Code of Ordinances, Oconee County, South Carolina.

**OCONEE COUNTY, SOUTH CAROLINA**

By: \_\_\_\_\_  
Reginald T. Dexter, Chairman, County Council  
Oconee County, South Carolina

ATTEST:

By: \_\_\_\_\_  
Elizabeth G. Hulse, Clerk to County Council  
Oconee County, South Carolina

First Reading:            May 4, 21010  
Second Reading:  
Public Hearing:  
Third Reading:



**AGENDA ITEM SUMMARY  
OCONEE COUNTY, SC**

**COUNCIL MEETING DATE: May 4, 2010  
COUNCIL MEETING TIME: 7:00 PM**

**ITEM TITLE OR DESCRIPTION:**

Award of contract for professional engineering services to B. P. Barber and Associates of Columbia, SC, in the amount of \$82,000.00 for the installation of methane extraction wells for the Solid Waste department. This amount includes a contingency of \$2,000.

**BACKGROUND OR HISTORY:**

In 2001-2002 Oconee County Solid Waste installed an active gas remediation (methane flare) system to extract the methane from the landfill and this gas is burnt off by way of a flare. The existing wells are six inch in diameter, 20-40 feet deep and hollow with no stone walls, which have allowed them to collapse. Many of these wells have quit producing and SC DHEC is now requiring replacement wells (see letter as attachment #1). The new wells will be constructed with a 3 foot diameter, filled with stone, and the depth will be determined by the depth of the waste in the landfill. This contract allows for 1,000 feet of wells to be installed and the number of wells will vary between 10 and 20 depending on the depth of the waste.

The County has used B. P. Barber & Associates since 2007 for a variety of engineering projects for the Solid Waste department including the landfill gas system assessment, well sampling, ground water and methane well monitoring systems, and sampling and analysis. B.P. Barber currently manages the groundwater monitoring as well as any methane issues that arise from the quarterly monitoring that Solid Waste staff perform. B. P. Barber will be coordinating and observing the installation of the replacement methane extraction wells.

**SPECIAL CONSIDERATIONS OR CONCERNS:**

Under the Request for Qualifications # 06-17 for Professional Services, B. P. Barber & Associates was selected as qualified to provide Environmental and Engineering services. County Council approved a contract and fee schedule Feb 20, 2007 and this contract is in its third renewal period.

SC DHEC is requiring these methane extraction wells to be installed to bring the landfill back into compliance.

**COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:**

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes

**STAFF RECOMMENDATION:**

Staff recommends the award of this contract for professional engineering services to B. P. Barber and Associates of Columbia, SC, in the amount of \$82,000.00 for the installation of methane extraction wells for the Solid Waste department. This amount includes a \$2,000 contingency.

**FINANCIAL IMPACT:**

Funding for this project will come from two accounts in the Testing Wells budgeted line item for Solid Waste:

010-718-60005-02009 - \$60,000 rolled over from prior fiscal year

010-718-60005-00000 - \$22,000 from current fiscal year budgeted amount

*Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.*

*A calendar with due dates marked may be obtained from the Clerk to Council.*





**ATTACHMENTS**

1. March 16, 2010 Letter from SC DHEC
2. Proposal from B. P. Barber & Associates

**Reviewed By/ Initials:**

\_\_\_\_\_ **County Attorney**      \_\_\_\_\_ **Finance**      \_\_\_\_\_ **Grants**      \_\_\_\_\_ **Procurement**

**Submitted or Prepared By:**

  
\_\_\_\_\_  
**Dept. Head/Elected Official**

**Approved for Submittal to Council:**

  
\_\_\_\_\_  
**Gene Klugh, Interim County Administrator**

*Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda.*

*A calendar with due dates marked may be obtained from the Clerk to Council.*

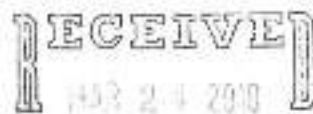


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March 16, 2010

C. Fred Hunter, Commissioner

*Promoting and protecting the health of the public and the environment* BY: .....

MR GENE KLUGH  
INTERIM COUNTY ADMINISTRATOR  
415 SOUTH PINE ST  
WALHALLA SC 29691

RE: Correspondence (Oberly to Klugh)  
Dated January 21, 2010  
Seneca Class 3 Landfill  
Solid Waste Permit # 371001-1101  
Oconee County

Dear Mr. Klugh:

The above-referenced correspondence was issued in response to a request from The Department following a review of the 2009 Annual Groundwater Monitoring Report. This Report detailed several instances where methane-monitoring results showed exceedances of the Lower Explosive Limit at methane monitoring wells GMW-5, -6, -7 and -10. In this correspondence, the Department requested a plan to upgrade the existing active gas extraction system or an alternative methane remediation plan was to be submitted on or before March 1, 2010. To date a proposal for either strategy has not been received. The Department again requests submittal of this plan on or before April 1, 2010 or the matter may be referred to the Bureau's Solid Waste Compliance and Enforcement Division.

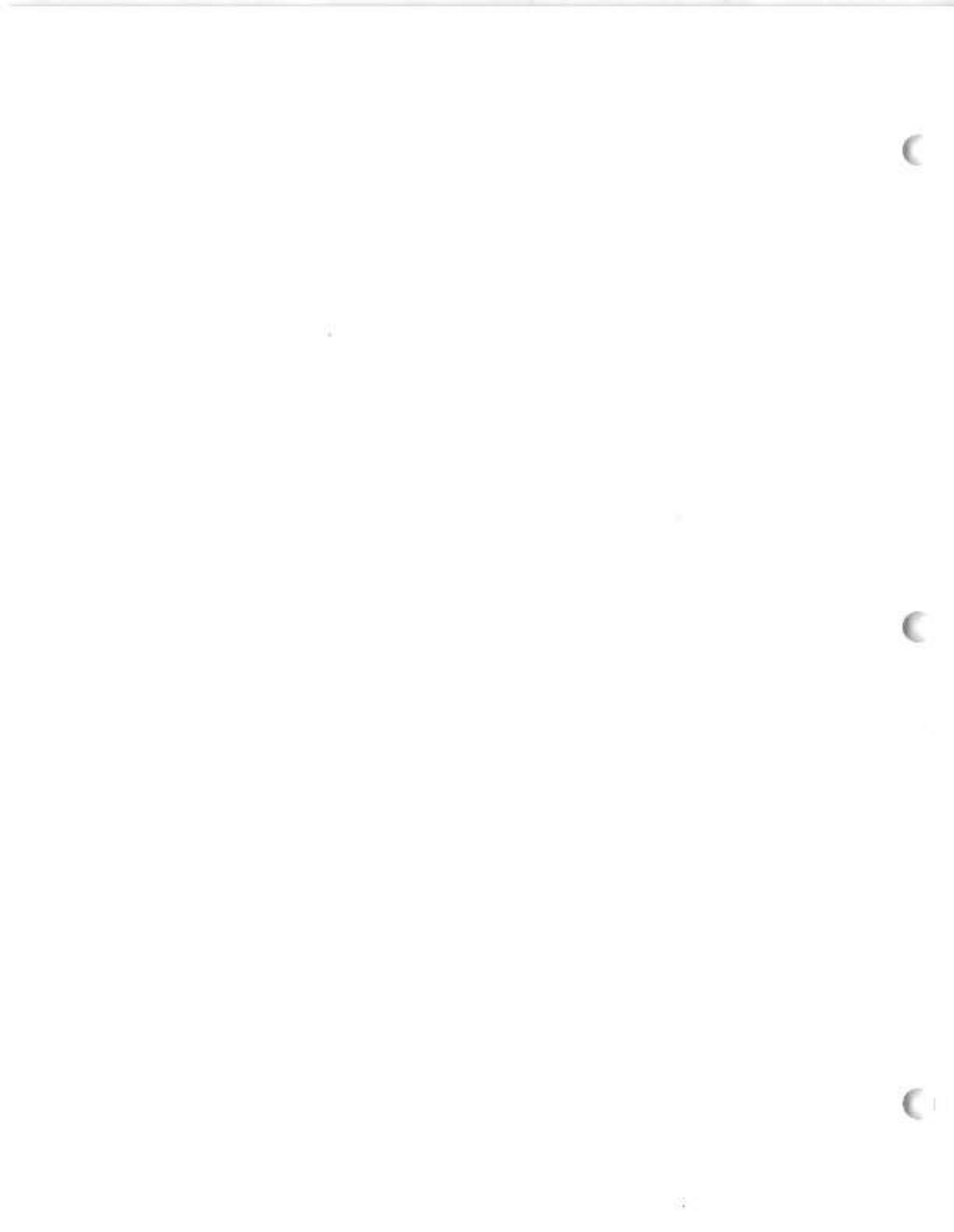
If you require any further information or have any questions or concerns, I may be reached at (803) 896-4042 or oberlydj@dhec.sc.gov.

Sincerely,

David Oberly, II, Hydrogeologist  
Solid Waste Groundwater Section  
Division of Mining and Solid Waste Management  
Bureau of Land and Waste Management

cc: John McCain, Engineer, Solid Waste Permitting  
Tyler Smith, Region 1 EQC (Anderson)  
Swain Still, Oconee County Solid Waste  
Michael Glowacz, P.G., B P Barber & Associates  
File: 20402

SW130113.djo



April 23, 2010

Mr. Swain Still  
Oconee County Solid Waste Office  
Post Office Box 1766  
Seneca, SC 29679

RE: Oconee County Seneca Landfill  
Proposal for Installation of Ten Gas Vents  
BP Barber Project No. 07177

Dear Swain:

During our meeting in your office improvement of the active landfill gas extraction system for the Oconee County Seneca Landfill was discussed. It was decided that least ten (10) strategically placed Gas Vents (GVs), constructed to maximize gas extraction capability, be added to the present GV array. The requested cost estimate for installation of the GV's has been prepared and is included in this proposal for your review and approval.

**Estimated Costs**

This proposal has been prepared to provide a BP Barber fee estimate to coordinate installation of the GV's and the subcontractor costs. BP Barber services include coordination with the driller and the County, 1 day in the field to coordinate startup, and preparation and submission of a Gas Vent Installation Report to include the locations of the GV's and their construction details.

For cost estimation purposes, we are assuming each GV will be installed to a depth of 100 feet. The driller will bore each vent hole with a 3-foot diameter bucket auger. Each vent bore hole will extend through the waste to the base of the landfill. The driller will provide and install the slotted 6-inch HDPE pipe, a 2-foot bentonite seal, and Lantec Wellheads for connection to the active LFG vacuum system. Kellett is the only driller we have found capable of installation of the 3-foot diameter wells in waste. We have used their services at the Big Creek Landfill in Anderson County, Park Road Landfill in Camden, and the Richland County Landfill in Columbia.





The County will provide the gravel (crush run) and a dozer for placement of the gravel around each vent pipe immediately after the pipe is inserted into the vent borehole. The County will dispose of the drill cuttings. It is estimated the five GVs will require approximately 10 working days to complete. A detailed cost breakdown is provided in the Table below.

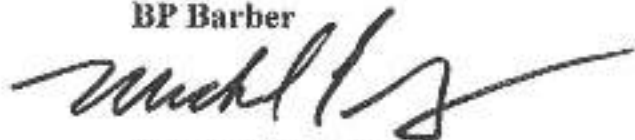
<b>ESTIMATED COSTS - HYDROGEOLOGICAL SERVICES</b>				
<b>GAS VENT INSTALLATION</b>				
<b>OCONEE COUNTY SENECA LANDFILL</b>				
<b>GAS VENT (GV) INSTALLATION</b>	<b>Quantity</b>	<b>Units</b>	<b>Unit Cost</b>	<b>Total Cost</b>
Install 10 100-foot gas vents to be connected to active system (Kellott)	1000	foot	\$75	\$75,000
Connect to correct LFG Recovery System	10	Vents	\$100	\$1,000
<b>GAS VENT INSTALLATION COORDINATION AND REPORTING</b>				
GV coordination and observation (BPB)	12	hours	\$125	\$1,500
Preparation and submission of a GV Installation Report (BPB)	1	report	\$2,500	\$2,500
<b>TOTAL</b>				<b>\$80,000</b>

Notes:  
BPB = BP Barber  
Kellott = Kellott Drilling in Simpsonville, SC

We appreciate your consideration of our proposal. If you have any questions or comments regarding the above information, please do not hesitate to contact us.

Very truly yours,

**BP Barber**



Michael E. Glowacz, P.G.  
Senior Hydrogeologist

cc: Lisa Muzekari, BP Barber



**AGENDA ITEM SUMMARY  
OCONEE COUNTY, SC**

COUNCIL MEETING DATE: May 4, 2010  
COUNCIL MEETING TIME: 7:00 PM

**ITEM TITLE OR DESCRIPTION:**

**RFP 09-16 Workers' Compensation Insurance**

Award RFP 09-16 Workers' Compensation Insurance to the South Carolina Counties Workers' Compensation Trust (SCCWCT) of Columbia, SC in the amount of \$479,342.00 for the annual premium amount for FY 2010-2011.

Also approve the renewal of this one year contract for four additional one year periods if the County and the SCCWCT are in agreement.

**BACKGROUND OR HISTORY:**

For the past 12 years Oconee County has participated in an insurance pool for workers' compensation insurance, including all but two counties in South Carolina, through the SC Association of Counties and a cooperative purchasing agreement. The County was satisfied with this arrangement, but decided to issue an RFP for these services to see if the County was receiving the best coverage and services for the lowest possible annual premium. The specifications of the RFP stated that the County wanted to be fully insured with no deductible for all workers' compensation claims. The County covers a wide range of workers with varied job classifications (relating to safety/risk involved) including approximately 450 employees, 350 volunteer firefighters, 160 volunteer EMT's and prison inmates that work for the County.

On March 30, 2010, formal sealed proposals were opened for Workers' Compensation Insurance. Nine firms were originally notified of this opportunity and four firms' submitted proposals. An evaluation committee consisting of Kay Olbon, Human Resources Director, Sheila Wald, Risk Manager, Scott Orr, Risk Manager for the Oconee County School District and Matt Gantt, Health Insurance Broker for Oconee County, reviewed all responses and recommended SCCWCT of Columbia, SC, as the most qualified firm to perform these services.

**SPECIAL CONSIDERATIONS OR CONCERNS:**

**COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:**

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes

**STAFF RECOMMENDATION:**

Staff recommends that Council approve the award of RFP 09-16 Workers' Compensation Insurance to the South Carolina Counties Workers' Compensation Trust (SCCWCT) of Columbia, SC in the amount of \$479,342.00 for the annual premium amount for FY 2010-2011 and also approve the renewal of this contract for four additional one year periods.

**FINANCIAL IMPACT:**

For FY 09-10 the County paid \$531,510.00, in annual premiums for workers compensation insurance. For FY 10-11 the requested budgeted amount is \$ 479,342.00, from account # 010-001-00090-73911.

**ATTACHMENTS**

**Reviewed By/ Initials:**

\_\_\_\_\_ County Attorney      \_\_\_\_\_ Finance      N/A Grants      RC Procurement

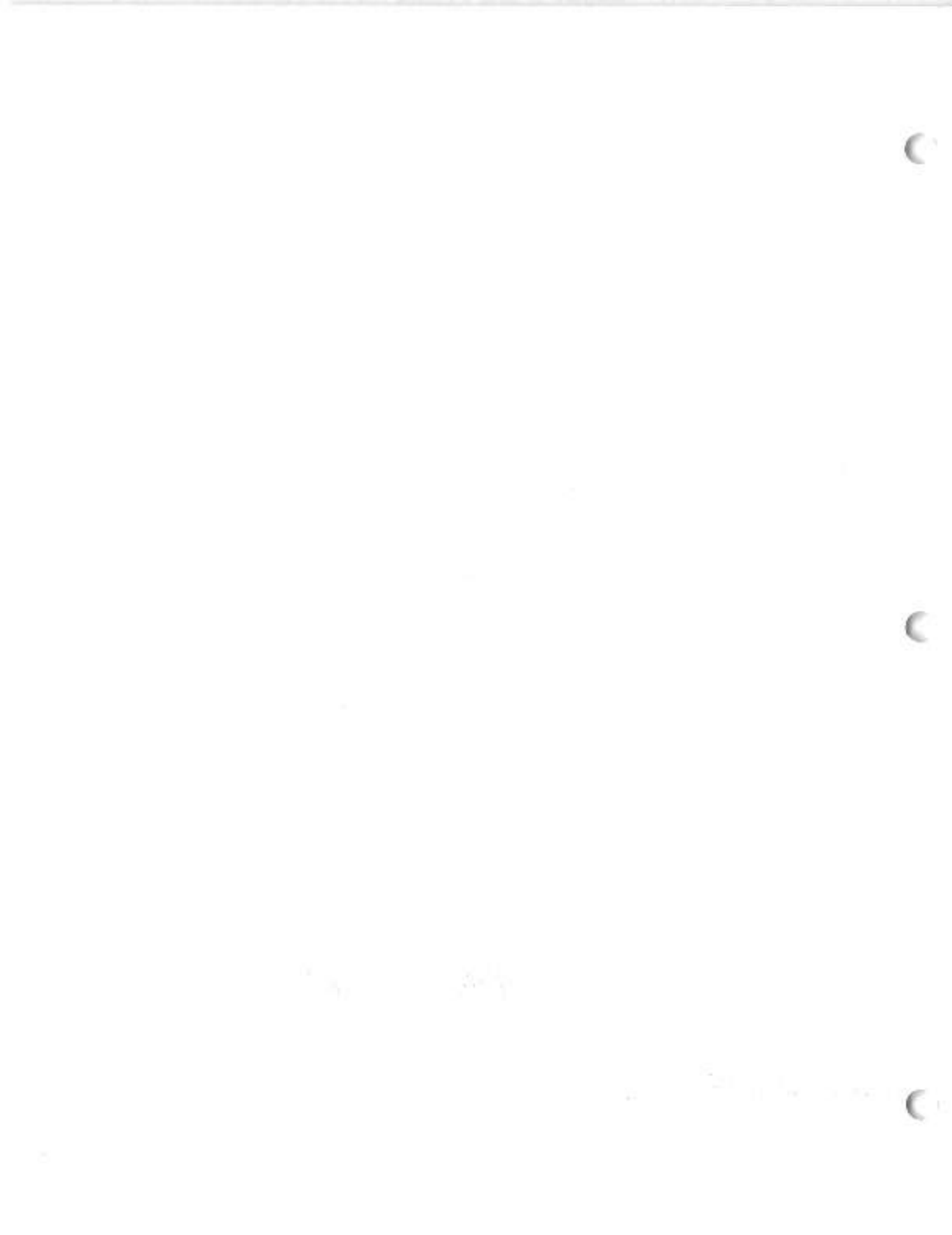
**Submitted or Prepared By:**

Rebbyn Courtney  
Department Head/Elected Official

**Approved for Submittal to Council:**

J. S. Klugh  
Gene Klugh, Interim County Administrator

*Council has directed that they receive their agenda packages a week prior to each Council meeting, therefore, Agenda Items Summaries must be submitted to the Administrator for his review/approval no later than 12 days prior to each Council meeting. It is the Department Head / Elected Officials responsibility to ensure that all approvals are obtained prior to submission to the Administrator for inclusion on an agenda. A calendar with due dates marked may be obtained from the Clerk to Council.*



**AGENDA ITEM SUMMARY  
OCONEE COUNTY, SC**

**COUNCIL MEETING DATE: Tuesday, May 4, 2010  
COUNCIL MEETING TIME: 7:00 PM**

**ITEM TITLE OR DESCRIPTION:**

Award Bid #09-13, Pre-Engineered Metal Building (PEMB) for Oconee County Public Works Facility to Able Constructors, Inc. of Greenville, SC in the amount of \$140,290.00.

**BACKGROUND OR HISTORY:**

The PEMB will be used to store vehicles, equipment and supplies used by the Roads Department. This covered storage area will protect the vehicles and equipment from the elements. It will also extend the life and overall appearance and performance of the vehicles and the equipment. The PEMB is classified as an Essential Use Facility.

On Tuesday, April 6, 2010, formal sealed bids were opened for a 60' x 200' x 16' PEMB. Bid submittals included materials and labor to construct and install a PEMB to store road and bridge maintenance equipment and vehicles. Twenty-five (25) companies were originally notified of this bid opportunity. Seventeen (17) companies submitted bids, with Able Constructors Inc. of Greenville, SC submitting the lowest bid of \$140,290.00.

**SPECIAL CONSIDERATIONS OR CONCERNS:**

**COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:**

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes

**STAFF RECOMMENDATION:**

Award Bid #09-13, Pre-Engineered Metal Building (PEMB) for Oconee County Public Works Facility to Able Constructors, Inc. of Greenville, SC in the amount of \$140,290.00.

**FINANCIAL IMPACT:**

For FY 2009-10, County Council approved \$150,000 (budget code 012-601-50850-02010) for the purchase of a covered storage area for the Public Works Facility.

**ATTACHMENTS**

1. Bid Tabulation

**Reviewed By/ Initials:**

\_\_\_\_\_ County Attorney

\_\_\_\_\_ Finance

\_\_\_\_\_ Grants

*PC*

\_\_\_\_\_ Procurement

**Submitted or Prepared By:**

*Robyn Coates*  
\_\_\_\_\_  
Department Head/Elected Official

**Approved for Submittal to Council:**

*Gene Klugh*  
\_\_\_\_\_  
Gene Klugh, Interim County Administrator

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*A calendar with due dates marked may be obtained from the Clerk to Council.*





Approved Budget Ordinance amount for bid item \$150,000

I hereby certify that to the best of my knowledge the tabular pricing of bids to be correct.

Bidder Date: 012-001-MS50-00010

*Robert Courtney*  
Procurement Director

Bidders	Able Constructors, Inc	Brantley Construction Company, LLC	Cannon Construction Co., Inc.	Concrete Connection, Inc.	Consolidated Southern Industries
Address	Greenville, SC	Charleston, SC	Greenville, SC	Taylors, SC	Anderson, SC
Completion Time	3 Months	7 Weeks	8 Weeks	180 Days	SUBMITTED A "NO BID"
Base Bid Total	\$ 115,228.00	\$ 86,438.00	\$ 55,572.00	\$ 129,125.00	
Add Alternate No. 1	\$ 4,623.00	\$ 3,330.00	\$ 4,080.00	\$ 5,765.00	
Add Alternate No. 2	\$ 2,667.00	\$ 7,210.00	\$ 3,744.00	\$ 11,172.00	
Sales Tax	\$ 5,612.00	\$ 5,186.00	\$ 3,155.00	\$ 5,875.00	
Labor	\$ 12,160.00	\$ 53,126.00	\$ 98,953.00	\$ 30,000.00	
<b>GRAND TOTAL</b>	<b>\$ 140,290.00</b>	<b>\$ 155,290.00</b>	<b>\$ 165,504.00</b>	<b>\$ 181,937.00</b>	

Bidders	Custom Steel Fabricators Co., Inc.	Durham Greene, Inc.	Hatfield Builders, Inc.	Hogan Construction Group, LLC	Hutch-N-Son Construction Inc.
Address	Gaston, SC	Easley, SC	Greenville, SC	Piedmont, SC	Seneca, SC
Completion Time	90 Days	90 Days	85 Days	120 Days	90 Days
Base Bid Total	\$ 80,300.00	\$ 133,000.00	\$ 119,835.00	\$ 143,958.00	\$ 134,394.00
Add Alternate No. 1	\$ 3,650.00	\$ 3,700.00	\$ 3,300.00	\$ 4,500.00	\$ 6,500.00
Add Alternate No. 2	\$ 3,000.00	\$ 6,400.00	\$ 8,170.00	\$ 8,500.00	\$ 10,200.00
Sales Tax	\$ 4,815.00	\$ 3,000.00	\$ 4,064.00	\$ 2,070.00	\$ 8,057.64
Labor	\$ 50,200.00	\$ 20,000.00	\$ 16,000.00	\$ 37,972.00	\$ 39,000.00
<b>GRAND TOTAL</b>	<b>\$ 141,966.00</b>	<b>\$ 166,100.00</b>	<b>\$ 151,370.00</b>	<b>\$ 197,000.00</b>	<b>\$ 198,051.64</b>

Bidders	Joy Construction Services	JonScoT General Contractors	Lazer Construction Co., Inc.	Lindler Construction Co.	Marsh/Bell Construction Co., Inc.
Address	Seneca, SC	Greenville, SC	Anderson, SC	Columbia, SC	Piedmont, SC
Completion Time	-	-	-	6-8 Weeks	90 Days
Base Bid Total	\$ 111,805.00	\$ 88,432.00	\$ 110,000.00	\$ 68,500.00	\$ 171,068.00
Add Alternate No. 1	\$ 3,023.00	\$ 3,300.00	\$ 4,900.00	\$ 2,850.00	\$ 7,211.00
Add Alternate No. 2	\$ 3,500.00	\$ 6,500.00	\$ 6,800.00	\$ 8,140.00	\$ 15,952.00
Sales Tax	\$ 4,875.00	\$ 5,305.00	\$ 6,600.00	\$ 4,500.00	\$ 6,288.00
Labor	\$ 78,700.00	\$ 53,212.00	\$ 78,400.00	\$ 77,000.00	\$ 9,564.00
<b>GRAND TOTAL</b>	<b>\$ 153,403.00</b>	<b>\$ 156,749.00</b>	<b>\$ 156,700.00</b>	<b>\$ 161,000.00</b>	<b>\$ 211,103.00</b>

Bidders	Moon McManus Comm. Const. LLC.	Progressive Builders, Inc.	SYS Constructors, Inc.		
Address	Greer, SC	Greenville, SC	Greenville, SC		
Completion Time	10 Days	-	12 Weeks		
Base Bid Total	\$ 227,700.00	\$ 120,785.00	\$ 149,499.00		
Add Alternate No. 1	\$ 4,920.00	\$ 3,700.00	\$ 3,080.00		
Add Alternate No. 2	\$ 10,508.00	\$ 9,050.00	\$ 3,700.00		
Sales Tax		\$ 4,215.00	\$ 4,857.00		
Labor		\$ 18,000.00	\$ 19,643.00		
<b>GRAND TOTAL</b>	<b>\$ 237,628.00</b>	<b>\$ 155,750.00</b>	<b>\$ 180,779.00</b>		



**AGENDA ITEM SUMMARY  
OCONEE COUNTY, SC**

**COUNCIL MEETING DATE:** May 4, 2010  
**COUNCIL MEETING TIME:** 7:00 PM

**ITEM TITLE OR DESCRIPTION:**

Award Bid 09-21, Roll-Off Truck with Hoist and Tarp System to Nulife Environmental, Inc of Easley, SC in the amount of \$129,182.00.

**BACKGROUND OR HISTORY:**

The Solid Waste Department is replacing a 1993 Ford LNT 9000 roll-off truck. The truck has been out of operation for several months and has an extensive list of items to be replaced or repaired including but not limited to the hoist hydraulic cylinders, the tarp system, and all tires. This truck has been in the fleet for 17 years, it is well past its useful life, and will be sold on GovDeals.

On April 13, 2010, formal sealed bids were opened. Ten companies were originally notified of this bid opportunity. We received nineteen bids and one no-bid. The low bid of \$124,300.00 submitted by Carolina International of Greer, SC did not meet specifications (has manual transmission). Nulife Environmental, Inc of Easley, SC submitted the next lowest bid of \$129,182.00.

**SPECIAL CONSIDERATIONS OR CONCERNS:**

**COMPLETE THIS PORTION FOR ALL PROCUREMENT REQUESTS:**

Does this request follow Procurement Ordinance #2001-15 guidelines? Yes

**STAFF RECOMMENDATION:**

Award Bid 09-21, Roll-Off Truck with Hoist and Tarp System to Nulife Environmental, Inc of Easley, SC in the amount of \$129,182.00.

**FINANCIAL IMPACT:**

FY 2009-2010 approved budgeted amount (010-718-50870-00000) - \$130,000.00 for the purchase of a Roll-Off Truck with a hoist and tarp system.

**ATTACHMENTS**

- 1) Bid Tab

**Reviewed By/ Initials:**

\_\_\_\_\_ County Attorney      \_\_\_\_\_ Finance      \_\_\_\_\_ Grants      RC Procurement

**Submitted or Prepared By:**

**Approved for Submittal to Council:**

Rebeka Courtney  
Department Head/Elected Official

J. E. Klugh  
Gene Klugh, Interim County Administrator

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*A calendar with due dates marked may be obtained from the Clerk to Council.*



Approved Budget Estimate amount for bid item \$ 150,000.00  
Est. # 1010718 02005-0000

I hereby certify that to the best of my knowledge  
the contents of this bid are correct  
*Robyn Courtney*  
Procurement Director

Bidders	Carolina International (1)	Carolina International (2)	Carolina International (3)	Christopher Trucks	Columbia Truck Center (1)
Address	Greer, SC	Greer, SC	Greer, SC	Greenville	Columbia, SC
Year and Model	2011 International 7600 SBA	2011 International 7600 SBA	2011 International 5300	NO BID	2011 Freightliner M2-112
Hoist Manufacturer	Galbreath U75-DR-174	Galbreath U75-DR-174	Galbreath Roll Off		Galbreath U75-DR-174
Base Bid	\$136,597.00	\$138,700.00	\$124,000.00		\$139,196.00
Sales Tax	\$00.00	\$00.00	\$00.00		\$900.00
Grand Total	\$136,597.00	\$138,700.00	\$124,000.00		\$139,426.00
Option 1 - Lift Axle	Did Not List	Did Not List	Did Not List		Single \$400.00 Dual \$8500.00
Option 2 - Jake Brake System	Did Not List	Did Not List	Did Not List		Standard
Delivery Time	120 Days ARO	120 Days ARO	120 Days ARO		120-150 Days ARO
Bidders	Columbia Truck Center (2)	Lodal South (1)	Lodal South (2)	Nulife Environmental (1)	Nulife Environmental (2)
Address	Columbia, SC	Rockingham, NC	Rockingham, NC	Easley, SC	Easley, SC
Year and Model	2011 Freightliner M2-112	2011 Freightliner M2-112	2011 Mack GU713	2011 Freightliner M2-112	2011 Freightliner M2-112
Hoist Manufacturer	Galbreath U75-DR-174	G&H	G&H	Stellar S75/1740R	Galbreath U75-DR-174
Base Bid	\$112,683.00	\$107,950.00	\$156,300.00	\$135,074.00	\$135,560.00
Sales Tax	\$900.00	\$900.00	\$900.00	\$900.00	\$900.00
Grand Total	\$112,683.00	\$108,850.00	\$156,000.00	\$135,374.00	\$135,810.00
Option 1 - Lift Axle	Single \$400.00 Dual \$8500.00	Included	Included	\$7,575.00	\$7,485.00
Option 2 - Jake Brake System	Standard	Included	Included	Included	Included
Delivery Time	90-120 ARO	120-140 Days	120-140 Days	100-120 Days	100-120 Days
Bidders	Nulife Environmental (3)	Nulife Environmental (4)	Nulife Environmental (5)	Nulife Environmental (6)	Nulife Environmental (7)
Address	Easley, SC	Fairfax, SC	Easley, SC	Easley, SC	Easley, SC
Year and Model	2011 Freightliner M2-112	2011 Freightliner M2-112	2011 International 7600	2011 International 7900	2011 Freightliner M2-112
Hoist Manufacturer	Galbreath U75-DR-174	Stellar S75/1740R	Galbreath U75-DR-174	Stellar S75/1740R	Galbreath U75-DR-174
Base Bid	\$129,358.00	\$129,882.00	\$135,483.00	\$134,995.00	\$133,505.00
Sales Tax	\$900.00	\$900.00	\$900.00	\$900.00	\$900.00
Grand Total	\$129,968.00	\$129,882.00	\$135,783.00	\$135,295.00	\$133,806.00
Option 1 - Lift Axle	\$7,485.00	\$7,575.00	\$7,485.00	\$7,575.00	\$7,485.00
Option 2 - Jake Brake System	Included	Included	\$968.00	\$968.00	Included
Delivery Time	End of July 2010	End of July 2010	150 Days	150 days	100-170 days
Bidders	Nulife Environmental (8)	Parfect Truck Eq.	Shesly Truck Center	Volvo & GMC Trucks (1)	Volvo & GMC Trucks (2)
Address	Easley, SC	Charlotte, NC	Duncan, SC	Charlotte, NC	Charlotte, NC
Year and Model	2011 Freightliner M2-112	2011 Freightliner M2-112	2011 Mack GU813	2011 Volvo VAC64B	2011 Volvo VAC64C
Hoist Manufacturer	Stellar S75/1740R	American Roll-Off	Stellar S75/174	Galbreath U75/174	Stellar S60/S101
Base Bid	\$135,020.00	\$135,925.00	\$54,512.00	\$35,443.00	\$60,507.00
Sales Tax	\$900.00	\$900.00	\$00.00	\$00.00	\$300.00
Grand Total	\$135,440.00	\$136,725.00	\$54,512.00	\$35,713.00	\$61,217.00
Option 1 - Lift Axle	\$7,575.00	\$5,485.00	7,575.00	7,486.00	7,575.00
Option 2 - Jake Brake System	Included	Standard	\$180.00	Std w/ engine	Included
Delivery Time	100-120 Days	90-120 Days	140 Days	30-60 Days ARO	30-60 Days ARO







OCONEE COUNTY PUBLIC LIBRARY

501 South Broad Street  
Walhalla, SC 29691  
(864) 638-4133 phone  
(864) 638-5132 fax  
www.ocplibrary.org

April 26, 2010

Mr. Gene Klugh, Interim County Administrator  
415 S. Pine Street  
Walhalla, SC 29691

Subject: Revised funding request – OCPL Board of Trustees; Replacement Library in Seneca

Dear Mr. Klugh:

For a number of years, starting with County Council hiring consultants in the year 2000 (completed in April 2002 with much public input), the Library Board of Trustees and others have worked diligently to kick-off the library system's five-year plan. Clearly the best time to have built this replacement facility in Seneca was in October 2009. This is when material costs were the lowest, and interest rates were the lowest. Since then, wood products have steadily increased in cost, and steel is now increasing. Interest rates too have begun to creep upward. Since we didn't build last October, then the next-best time to build is now. When unemployment is so high too, this would hopefully employ some local construction workers as we work through these tough but improving economic times.

As an incentive to get this done now, the Library Board of Trustees has unanimously approved the revised request for vote on May 4<sup>th</sup>. We believe that, if we can build now, we can cut about \$200,000 of the \$9.1 million figure suggested by our architect. And, we will ask the USDA for an additional \$300,000, or \$2.8 million total. They have always presented the figure of \$2.5 million to us, but have also said they may go "up to 35%." With the \$2.8 million request, this is about 31.5%, and still keeps us realistic while competing from a fairly small pool of \$100 million for libraries. So, the May 4 request is as follows:

USDA General Obligation Bond	\$5,600,000
USDA Grant	\$2,800,000
Private Funds Raised Locally	\$ 500,000
Project total as of May 4, 2010	\$8,900,000

If not approved on May 4, the Library Board of Trustees will revise its budget request to \$9,100,000, as before, with no other potential funding source. If something comes up later we can take advantage of, we will. But the current opportunity is the only thing we believe we can depend on at this time. We have engaged ACOG to assist with this, assuming approval May 4<sup>th</sup>.

If any question, do not hesitate to contact me.

OCONEE COUNTY PUBLIC LIBRARY

William "Biff" Kennedy, Chairman, OCPL Library Board of Trustees

- cc: Kendra Brown, Finance Director
- Elizabeth G. Hulse – Clerk to Council
- Council Chairman – Reg Dexter – District V
- Councilman – Paul Corbell – District I
- Councilman – Wayne McCall – District II
- Councilman – Mario Suarez – District III
- Councilman – Joel Thrift – District IV





Providing Quality Services To Local Governments Since 1965.

April 30, 2010

Mr. Gene Klugh  
Oconee County Administrator  
415 South Pine Street  
Walhalla, South Carolina 29691

Dear Gene:

As instructed by the county councils of Anderson, Oconee and Pickens, the Appalachian Council of Governments will be assisting with the advertising and, bidding of approximately 516 acres of property jointly owned by the three counties. It is our intention to bid the property as outlined below.

Terms of the sale:

1. This process will be nearly identical to the previous bid attempt.
2. We will advertise in the Greenville news, Anderson independent, Clemson Messenger, the Seneca Journal and the state's South Carolina Business Opportunities (SCBO) online service. We will place a single brief ad in each paper and will reference more detailed information on the ACOG website. We will pay for the newspaper ads with some of the money that ACOG is holding in reserve for the three counties.
3. A copy of the property plat of the sale property will be available at the Pickens County Assessor's Office for public inspection.
4. ACOG will receive sealed mailed/hand-delivered paper bids which will remain sealed until they are publically opened Tuesday, June 1, 10:30 a.m. at ACOG.
5. Ads will state a *minimum bid of \$2.84 million*, with the property being sold to the highest bidder above that minimum who meets the terms of the sale.

6. The apparent bid winner will be required to deposit 10% of the full bid price with ACOG.
7. Sale will become final upon passage of a required ordinance by each of the three counties. The counties may choose to hold ordinance readings prior to the bid opening.

We understand that the counties are in agreement with these terms. If you and your council agree, please reply to us in writing giving us permission to proceed. If there are any disagreements, additional terms or other unresolved questions, ACOG will request a formal face to face meeting of the council chairmen to work out changes, and we will suspend the sale until all questions are resolved.

ACOG is pleased to assist Anderson, Oconee and Pickens Counties in this collective project. We look forward to hearing from you.

Sincerely,



Joe Newton  
Director, ACOG Governmental Services

Copies to each Administrator



**NOTES**  
**LAW ENFORCEMENT, PUBLIC SAFETY, HEALTH &**  
**WELFARE COMMITTEE MEETING**  
**April 26, 2010**

Mr. Thrift made a motion, seconded by Mr. Suarez, approved 3 – 0 to recommend to full council to direct the county administrator to begin negotiations for a fire service contract with the City of Seneca.

**ASK FOR FULL COUNCIL VOTE TO APPROVE COMMITTEE RECOMMENDATION**







**MINUTES**  
**BUDGET, FINANCE & ADMINISTRATION**  
**COMMITTEE MEETING**

April 21, 2010

April 22, 2010

April 27, 2010

**Elected Official / Outside Agency Presentation to Committee:**

Sheriff's Department [101] / Communications [104] / Solicitor's Office [504]  
Treasurer [306]  
Coroner [103]  
Disability & Special Needs [705]  
American Red Cross [705]  
Library Board [206]  
Golden Harvest Food Bank [705]  
City of Seneca [705]  
Local Emergency Planning Committee / LEPC [705]

**Special Revenue Funds**

Emergency Services Fund 20  
Victim's Assistance – Sheriff's Office  
Victim's Assistance – Solicitor's Office  
ATAX – State & Local  
911 Fund  
Library State Aid  
Tri County Technical College

**Capital Project Funds Discussion**

- Economic Development
- Bridge & Culvert Fund
- Remaining Capital Project Funds

**Oconee County Department Budget Discussion:**

Dept 101 – Sheriff's Department through Dept 710 – Human Resources

